

# WEST VIRGINIA LEGISLATURE

THIRD EXTRAORDINARY SESSION, 1990

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## ENROLLED

Com. Sub. for 8  
SENATE BILL NO. \_\_\_\_\_

(By Senators Burdette and Harman)

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PASSED August 31, 1990  
In Effect from Passage

No. 8

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 8**

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(BY SENATORS BURDETTE, MR. PRESIDENT, AND HARMAN,  
BY REQUEST OF THE EXECUTIVE)

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[Passed August 31, 1990; in effect from passage.]

AN ACT to amend and reenact section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, seven, eight, ten and twelve, article one-c, chapter eleven; to amend and reenact section two-a, article three of said chapter; to amend and reenact sections six-e and six-f, article eight of said chapter eleven; to further amend said article by adding thereto a new section, designated section six-g; to amend and reenact section two-n, article thirteen of said chapter; to amend and reenact sections nine, sixteen and thirty, article fifteen of said chapter; to further amend said article by adding thereto two new sections, designated sections eight-c and eight-d; to amend and reenact sections eight and seventy-four, article twenty-one of said chapter; to amend and reenact section nine-a, article twenty-four of said chapter; to further amend said chapter by adding thereto a new article, designated article twelve-b; to amend and reenact sections one, two, three, four, nine, ten, twelve and thirteen, article one, chapter twelve of

said code; to amend and reenact sections one, two, three, four, five, six and seven, article one-a of said chapter; to amend and reenact sections two, three, four and five, article two of said chapter; to amend and reenact sections one and eleven, article three of said chapter twelve; to amend and reenact section thirteen, article four of said chapter; to amend and reenact sections two, four and six, article five of said chapter twelve; to amend and reenact sections four, five and six, article six of said chapter; to further amend said article six by adding thereto two new sections, designated sections one-a and nine-d; to amend and reenact sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code; to amend and reenact sections one, four, five-a, eight, nine, thirteen-b and fifteen, article nine-a, chapter eighteen of said code; to further amend said article nine-a by adding thereto a new section, designated section eight-a; to amend and reenact sections two, four, five, six, eight and nine, article twenty-two-d of said chapter eighteen; to amend and reenact section five, article thirty, chapter eighteen of said code; to amend and reenact sections one, two, five, five-a, five-b, five-d, eight, eight-a and nine, article four, chapter eighteen-a of said code; and to amend article two, chapter twenty-four of said code by adding thereto two new sections, designated sections one-g and eleven-b, all relating to the education enhancement act of 1990; providing adequate funding, adequate teacher pay scales, and independent professional management of public funds in order to enhance the future of public education in this state; removing board of investments from department of tax and revenue; setting forth legislative findings; adding an additional citizen member to the property evaluation training and procedures commission; transferring authority to promulgate legislative rules for sale of microfilm, photographs and maps; requiring county assessors to develop, maintain and sell tax maps in accordance with legislative rules promulgated by the commission; deleting the requirement that assessors approve certain contracts; providing that increases and valuation may be estimated and uniformly distributed over a three-year period; continu-

ing the two percent valuation until repayment of loan; removing residency requirement for appraisers; requiring money disbursed from the county revolving valuation fund to be disbursed in the same manner as other funds provided to the assessor; requiring the cost of appraising industrial and natural resources property to be borne by the state; requiring the tax commissioner and all assessors to send to each person owning or controlling property appraised by them a pamphlet explaining the reappraisal process and its equalization goal; providing for regular and special levy rate reductions generally; requiring local levying bodies with certain increases in special levy revenues to hold public hearing; providing a minimum severance tax to be imposed at a rate of fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use; permitting a credit for minimum severance paid against the severance tax on coal imposed in article thirteen-a, chapter eleven of the code not to exceed the liability for severance tax on coal for the year, exclusive of the additional tax on coal imposed by section six of said article thirteen-a and determined after application of certain credits to which the taxpayer is entitled; providing short title, definitions, accounting periods and methods; requiring minimum severance tax returns to be made on a separate consolidated composite or unitary basis identical to the separate consolidated, composite or unitary basis on which severance tax returns are filed; providing for an annual return and periodic installment payments of estimated tax, time and place for payment, extensions of time for filing return and paying tax, signing of returns and documents; allowing tax commissioner to require taxpayer compliance bond or to require first purchaser to withhold tax of delinquent taxpayer; providing for the retention of records; making minimum severance tax subject to all the provisions of "West Virginia Tax Procedures and Administration Act" and the "West Virginia Tax Crimes and Penalties Act"; and further providing for severability, effective date and the filing of combined returns and reports for article twelve-b and thirteen-a taxes under said chapter eleven; increas-

ing business and occupation tax rates for the privileges set forth in section two-n, article thirteen, chapter eleven of the code; requiring business and occupation tax to be based on the alternative methods, with liability for tax being the greater of the two; providing immediate pass-through to purchasers of increase in tax; specifying effective date of such changes in the business and occupation tax; eliminating exemption from sales tax for sales of tangible personal property to be consumed in the construction of real property that is or will be used by governmental entity for a governmental or proprietary purpose; providing transition rules continuing said exemption for certain written contractual obligations entered into on or before the fifteenth day of September, one thousand nine hundred ninety; prohibiting contractors and agents from asserting sales tax exemptions to which the persons for whom they perform services are entitled; requiring, in certain instances, accelerated payment of consumers sales tax collected from consumers and personal income tax withheld from employees during the month of June each year; removing the credit for severance tax against the personal income tax and against the corporation net income tax, and specifying effective date of such removal; permitting loans from the consolidated pension fund to the state for educational improvements and providing the terms and conditions for repayment of such loans; creating a special education enhancement fund in the state treasury; dedicating certain revenues from consumers sales and service tax to repayment of said loans; clarifying and expanding the duties of the West Virginia state board of investments; setting forth legislative findings; designating state depositories; reciting legislative findings; providing for maintenance of deposits by the board of investments; designating depositories for interest earnings; providing for records of depository bonds by the board of investments; allowing the board to transfer funds by check or bank wire; requiring board of investments to keep records for each depository used; making funds available to the board of investments; providing for board payments for banking services; providing for board management of

the linked deposit program; defining terms; reciting legislative findings; limiting linked deposits; providing for loan applications to the board of investments; providing for acceptance or rejection of loan package; providing for certification of compliance by the board; providing for liability of the board; providing for payment and deposit of taxes and other amounts due the state or any political subdivision; providing for deposits with the board; providing for deposit of money by the board; specifying duty of depositories; providing for deposits in corresponding banks of state depositories; providing for appropriations, expenditures and deductions; prescribing manner of payment from treasury; setting forth accounts, reports and general provisions; providing for bank reconciliations by the board; designing the board as the custodian of securities; requiring board to keep records of securities received; specifying when notes deemed securities; reciting legislative findings relating to board of investments; specifying composition of board members; expanding powers of the board; setting forth fees for services and special revenue account; authorizing bond issues for original indebtedness; making bonds payable at office of the board; providing for bonds to be registered at offices of the board; allowing exchange of bonds at offices of the board; causing the student loan assistance program to be administered by the board instead of the state treasurer; defining terms; providing for board investment and linked deposits; providing applications to the board; providing for board acceptance or rejection of loan packages; providing for board certification of compliance; providing that board not liable; providing for board participation in higher education tuition trust; specifying composition of board of directors; amending the public school support plan; deleting expired language; deleting a scheduled increase in the professional instructional personnel ratio, freezing the growth of administrative and pay grade "H" personnel and requiring the governor to submit a recommendation to the Legislature for establishing responsible administrative support; changing the mandate for reductions in professional education to be conducted in a certain

order to a statement of intent; changing the foundation allowance for administrative cost to a per person basis and providing for a separate foundation allowance for regional educational service agency; deleting a scheduled increase in the current expense multiplier, basing the distribution of funds for substitutes or current expense on the number of employees, limiting growth in the county allowance to four percent per year and providing for a separate allocation to be distributed to schools for expenditure by faculty senates; requiring a one-time appropriation for certain counties; changing the computation of funds accrued from decreases in adjusted enrollment to a yearly basis and changing the allocation of such funds; requiring requests for supplemental appropriations related to increased net enrollment; enacting salary increases for professional educators and service personnel and providing appropriate definitions; providing a definition of salary equity among the counties; removing the growth caps on supplemental salaries for professional educators and service personnel; providing for payment of minimum salary equity adjustments within the minimum salary schedules; providing a definition and salary classification for paraprofessionals; providing that extra duty assignments must be outside the normal working day for additional compensation; providing that employee pay shall be accompanied by an accounting of withholdings and the dollar value of benefits provided by the state; and providing rate incentives for utility investment in qualified clean coal and clean air technology facilities, and continuing prudence reviews by the public service commission.

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

That section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, five, seven, eight, ten and twelve, article one-c, chapter eleven be amended and reenacted; that section two-a, article three of said chapter be amended and reenacted; that sections six-e and six-f, article eight of said chapter be amended and reenacted; that said article eight

be further amended by adding thereto a new section, designated section six-g; that section two-n, article thirteen of said chapter be amended and reenacted; that sections nine, sixteen and thirty, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-c and eight-d; that sections eight and seventy-four, article twenty-one of said chapter eleven be amended and reenacted; that section nine-a, article twenty-four of said chapter be amended and reenacted; that said chapter be amended by adding thereto a new article, designated article twelve-b; that sections one, two, three, four, nine, ten, twelve and thirteen, article one, chapter twelve of said code be amended and reenacted; that sections one, two, three, four, five, six and seven, article one-a of said chapter be amended and reenacted; that sections two, three, four and five, article two of said chapter be amended and reenacted; that sections one and eleven, article three of said chapter be amended and reenacted; that section thirteen, article four of said chapter be amended and reenacted; that sections two, four and six, article five of said chapter be amended and reenacted; that sections four, five and six, article six of said chapter be amended and reenacted; that article six of said chapter be further amended by adding thereto two new sections, designated sections one-a and nine-d; that sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code be amended and reenacted; that sections one, four, five-a, eight, nine, thirteen-b and fifteen, article nine-a, chapter eighteen of said code be amended and reenacted; that said article nine-a be further amended by adding thereto a new section, designated section eight-a; that sections two, four, five, six, eight and nine, article twenty-two-d of said chapter be amended and reenacted; that section five, article thirty of said chapter eighteen be amended and reenacted; that sections one, two, five, five-a, five-b, five-d, eight, eight-a and nine, article four, chapter eighteen-a of said code be amended and reenacted; and that article two, chapter twenty-four be amended by adding thereto two new sections, designated sections one-g and eleven-b, all to read as follows:



## **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.**

### **ARTICLE 2. TRANSFERS OF AGENCIES AND BOARDS.**

#### **§5F-2-1. Transfer and incorporation of agencies and boards.**

1 (a) The following agencies and boards, including all  
2 of the allied, advisory, affiliated or related entities and  
3 funds associated with any such agency or board, are  
4 hereby transferred to and incorporated in and shall be  
5 administered as a part of the department of  
6 administration:

7 (1) Building commission provided for in article six,  
8 chapter five of this code;

9 (2) Records management and preservation advisory  
10 committee provided for in article eight, chapter five of  
11 this code;

12 (3) Public employees retirement system and board of  
13 trustees provided for in article ten, chapter five of this  
14 code;

15 (4) Public employees insurance agency and public  
16 employees advisory board provided for in article  
17 sixteen, chapter five of this code;

18 (5) Department of finance and administration and  
19 council of finance and administration provided for in  
20 article one, chapter five-a of this code;

21 (6) Employee suggestion award board provided for in  
22 article one-a, chapter five-a of this code;

23 (7) Governor's mansion advisory committee pro-  
24 vided for in article four-a, chapter five-a of this code;

25 (8) Advisory commission to the information system  
26 services division in the department of finance and  
27 administration provided for in article seven, chapter  
28 five-a of this code;

29 (9) Teachers retirement system and teachers' retire-  
30 ment board provided for in article seven-a, chapter  
31 eighteen of this code;

32 (10) Commission on uniform state laws provided for

33 in article one-a, chapter twenty-nine of this code;

34 (11) Department of personnel of the civil service  
35 system and the civil service commission provided for  
36 in article six, chapter twenty-nine of this code;

37 (12) Education and state employees grievance board  
38 provided for in article twenty-nine, chapter eighteen  
39 and article six-a, chapter twenty-nine of this code;

40 (13) Board of risk and insurance management pro-  
41 vided for in article twelve, chapter twenty-nine of this  
42 code;

43 (14) Boundary commission provided for in article  
44 twenty-three, chapter twenty-nine of this code;

45 (15) Public legal services council provided for in  
46 article twenty-one, chapter twenty-nine of this code;

47 (16) Division of personnel which may be hereafter  
48 created by the Legislature; and

49 (17) The West Virginia ethics commission which may  
50 be hereafter created by the Legislature.

51 (b) The following agencies and boards, including all  
52 of the allied, advisory, affiliated or related entities and  
53 funds associated with any such agency or board, are  
54 hereby transferred to and incorporated in and shall be  
55 administered as a part of the department of com-  
56 merce, labor and environmental resources:

57 (1) Forest management review commission provided  
58 for in article twenty-four, chapter five of this code;

59 (2) Department of commerce provided for in article  
60 one, chapter five-b of this code;

61 (3) Office of community and industrial development  
62 provided for in article two, chapter five-b of this code;

63 (4) Enterprise zone authority provided for in article  
64 two-b, chapter five-b of this code;

65 (5) Office of federal procurement assistance provided  
66 for in article two-c, chapter five-b of this code;

67 (6) Export development authority provided for in

68 article three, chapter five-b of this code;

69 (7) Labor-management council provided for in  
70 article four, chapter five-b of this code;

71 (8) Industry and jobs development corporation  
72 provided for in article one, chapter five-c of this code;

73 (9) Public energy authority and board provided for  
74 in chapter five-d of this code;

75 (10) Air pollution control commission provided for in  
76 article twenty, chapter sixteen of this code;

77 (11) Resource recovery—solid waste disposal author-  
78 ity provided for in article twenty-six, chapter sixteen  
79 of this code;

80 (12) Division of forestry and forestry commission  
81 provided for in article one-a, chapter nineteen of this  
82 code;

83 (13) Department of natural resources and natural  
84 resources commission provided for in article one,  
85 chapter twenty of this code;

86 (14) Water resources board provided for in article  
87 five, chapter twenty of this code;

88 (15) Water development authority and board pro-  
89 vided for in article five-c, chapter twenty of this code;

90 (16) Department of labor provided for in article one,  
91 chapter twenty-one of this code;

92 (17) Labor-management relations board provided for  
93 in article one-b, chapter twenty-one of this code;

94 (18) Public employees occupational safety and health  
95 advisory board provided for in article three-a, chapter  
96 twenty-one of this code;

97 (19) Minimum wage rate board provided for in  
98 article five-a, chapter twenty-one of this code;

99 (20) Board of manufactured housing construction  
100 and safety provided for in article nine, chapter  
101 twenty-one of this code;

102 (21) Department of energy provided for in article

103 one, chapter twenty-two of this code;

104 (22) Reclamation board of review provided for in  
105 article four, chapter twenty-two of this code;

106 (23) Board of appeals provided for in article five,  
107 chapter twenty-two of this code;

108 (24) Board of coal mine health and safety and coal  
109 mine safety and technical review committee provided  
110 for in article six, chapter twenty-two of this code;

111 (25) Shallow gas well review board provided for in  
112 article seven, chapter twenty-two of this code;

113 (26) Oil and gas conservation commission provided  
114 for in article eight, chapter twenty-two of this code;

115 (27) Board of miner training, education and certifi-  
116 cation provided for in article nine, chapter twenty-two  
117 of this code;

118 (28) Mine inspectors' examining board provided for  
119 in article eleven, chapter twenty-two of this code;

120 (29) Oil and gas inspectors' examining board pro-  
121 vided for in article thirteen, chapter twenty-two of  
122 this code;

123 (30) Geological and economic survey provided for in  
124 article two, chapter twenty-nine of this code;

125 (31) Blennerhassett historical park commission  
126 provided for in article eight, chapter twenty-nine of  
127 this code;

128 (32) Tourist train and transportation board provided  
129 for in article twenty-four, chapter twenty-nine of this  
130 code;

131 (33) Economic development authority provided for in  
132 article fifteen, chapter thirty-one of this code;

133 (34) Board of members of the forest industries  
134 industrial foundation provided for in article sixteen,  
135 chapter thirty-one of this code;

136 (35) Department of banking provided for in article  
137 two, chapter thirty-one-a of this code;

138 (36) Board of banking and financial institutions  
139 provided for in article three, chapter thirty-one-a of  
140 this code;

141 (37) Consumer affairs advisory council provided for  
142 in article seven, chapter forty-six-a of this code; and

143 (38) Lending and credit rate board provided for in  
144 chapter forty-seven-a of this code.

145 (c) The following agencies and boards, including all  
146 of the allied, advisory, affiliated or related entities and  
147 funds associated with any such agency or board, are  
148 hereby transferred to and incorporated in and shall be  
149 administered as a part of the department of education  
150 and the arts:

151 (1) Library commission provided for in article one,  
152 chapter ten of this code;

153 (2) Educational broadcasting authority provided for  
154 in article five, chapter ten of this code;

155 (3) Board of regents provided for in article twenty-  
156 six, chapter eighteen of this code; and

157 (4) Department of culture and history, archives and  
158 history commission and commission on the arts pro-  
159 vided for in article one, chapter twenty-nine of this  
160 code.

161 (d) The following agencies and boards, including all  
162 of the allied, advisory, affiliated or related entities and  
163 funds associated with any such agency or board, are  
164 hereby transferred to and incorporated in and shall be  
165 administered as a part of the department of health and  
166 human resources:

167 (1) Human rights commission provided for in article  
168 eleven, chapter five of this code;

169 (2) Department of human services provided for in  
170 article two, chapter nine of this code;

171 (3) Department of health and board of health pro-  
172 vided for in article one, chapter sixteen of this code;

173 (4) Health care planning council provided for in

174 article two-d, chapter sixteen of this code;

175 (5) Office of emergency medical services and advisory council thereto provided for in article four-c,  
176 chapter sixteen of this code;

178 (6) Continuum of care board for the elderly, disabled  
179 and terminally ill provided for in article five-d,  
180 chapter sixteen of this code;

181 (7) Hospital finance authority provided for in article  
182 twenty-nine-a, chapter sixteen of this code;

183 (8) Health care cost review authority provided for in  
184 article twenty-nine-b, chapter sixteen of this code;

185 (9) Structural barriers compliance board provided  
186 for in article ten-f, chapter eighteen of this code;

187 (10) Department of employment security, state  
188 advisory council thereto and board of review provided  
189 for in chapter twenty-one-a of this code; .

190 (11) Office of workers' compensation commissioner,  
191 advisory board thereto and workers' compensation  
192 appeal board provided for in chapter twenty-three of  
193 this code;

194 (12) Commission on aging provided for in article  
195 fourteen, chapter twenty-nine of this code;

196 (13) Commission on mental retardation and advisory  
197 committee thereto provided for in article fifteen,  
198 chapter twenty-nine of this code;

199 (14) Women's commission provided for in article  
200 twenty, chapter twenty-nine of this code; and

201 (15) Commission on children and youth provided for  
202 in article six-c, chapter forty-nine of this code.

203 (e) The following agencies and boards, including all  
204 of the allied, advisory, affiliated or related entities and  
205 funds associated with any such agency or board, are  
206 hereby transferred to and incorporated in and shall be  
207 administered as a part of the department of public  
208 safety:

209 (1) Adjutant general's department provided for in

210 article one-a, chapter fifteen of this code;

211 (2) Armory board provided for in article six, chapter  
212 fifteen of this code;

213 (3) Military awards board provided for in article one-  
214 g, chapter fifteen of this code;

215 (4) Department of public safety and commission on  
216 drunk driving prevention provided for in article two,  
217 chapter fifteen of this code;

218 (5) Office of emergency services and emergency  
219 services advisory council provided for in article five,  
220 chapter fifteen of this code;

221 (6) Sheriffs' bureau provided for in article eight,  
222 chapter fifteen of this code;

223 (7) Department of corrections provided for in chap-  
224 ter twenty-five of this code;

225 (8) Fire commission and state fire administrator  
226 provided for in article three, chapter twenty-nine of  
227 this code;

228 (9) Regional jail and prison authority provided for in  
229 article twenty, chapter thirty-one of this code;

230 (10) Board of probation and parole provided for in  
231 article twelve, chapter sixty-two of this code; and

232 (11) Department of veterans' affairs and veterans'  
233 council provided for in article one, chapter nine-a of  
234 this code.

235 (f) The following agencies and boards, including all  
236 of the allied, advisory, affiliated or related entities and  
237 funds associated with any such agency or board, are  
238 hereby transferred to and incorporated in and shall be  
239 administered as a part of the department of tax and  
240 revenue:

241 (1) Tax department provided for in article one,  
242 chapter eleven of this code;

243 (2) Appraisal control and review commission pro-  
244 vided for in article one-a, chapter eleven of this code;

245 (3) Office of nonintoxicating beer commissioner  
246 provided for in article sixteen, chapter eleven of this  
247 code;

248 (4) Municipal bond commission provided for in  
249 article three, chapter thirteen of this code;

250 (5) Racing commission provided for in article  
251 twenty-three, chapter nineteen of this code;

252 (6) Lottery commission and position of lottery  
253 director provided for in article twenty-two, chapter  
254 twenty-nine of this code;

255 (7) Agency of insurance commissioner provided for  
256 in article two, chapter thirty-three of this code;

257 (8) Office of alcohol beverage control commissioner  
258 provided for in article two, chapter sixty of this code;  
259 and

260 (9) Division of professional and occupational licenses  
261 which may be hereafter created by the Legislature.

262 (g) The following agencies and boards, including all  
263 of the allied, advisory, affiliated or related entities and  
264 funds associated with any such agency or board, are  
265 hereby transferred to and incorporated in and shall be  
266 administered as a part of the department of  
267 transportation:

268 (1) Road commission provided for in article two,  
269 chapter seventeen of this code;

270 (2) Department of highways provided for in article  
271 two-a, chapter seventeen of this code;

272 (3) Turnpike commission provided for in article  
273 sixteen-a, chapter seventeen of this code;

274 (4) Department of motor vehicles provided for in  
275 article two, chapter seventeen-a of this code;

276 (5) Driver's licensing advisory board provided for in  
277 article two, chapter seventeen-b of this code;

278 (6) Motorcycle safety standards and specifications  
279 board provided for in article fifteen, chapter  
280 seventeen-c of this code;



281 (7) Aeronautics commission provided for in article  
282 two-a, chapter twenty-nine of this code;

283 (8) Railroad maintenance authority provided for in  
284 article eighteen, chapter twenty-nine of this code; and

285 (9) Port authority which may be hereafter created  
286 by the Legislature.

287 (h) Except for such powers, authority and duties as  
288 have been delegated to the secretaries of the depart-  
289 ments by the provisions of section two of this article,  
290 the existence of the position of administrator and of  
291 the agency and the powers, authority and duties of  
292 each administrator and agency shall not be affected by  
293 the enactment of this chapter.

294 (i) Except for such powers, authority and duties as  
295 have been delegated to the secretaries of the depart-  
296 ments by the provisions of section two of this article,  
297 the existence, powers, authority and duties of boards  
298 and the membership, terms and qualifications of  
299 members of such boards shall not be affected by the  
300 enactment of this chapter, and all boards which are  
301 appellate bodies or were otherwise established to be  
302 independent decision-makers shall not have their  
303 appellate or independent decision-making status  
304 affected by the enactment of this chapter.

305 (j) Wherever elsewhere in this code, in any act, in  
306 general or other law, in any rule or regulation, or in  
307 any ordinance, resolution or order, reference is made  
308 to any department transferred to and incorporated in  
309 a department created in section two, article one of this  
310 chapter, such reference shall henceforth be read,  
311 construed and understood to mean a division of the  
312 appropriate department so created, and any such  
313 reference elsewhere to a division of a department so  
314 transferred and incorporated shall henceforth be read,  
315 construed and understood to mean a section of the  
316 appropriate division of the department so created.

317 (k) The crime victims compensation fund provided  
318 for in article two-a, chapter fourteen of this code,  
319 including all of the allied, advisory, affiliated or

320 related entities and funds associated therewith, is  
321 hereby transferred to and incorporated in and shall be  
322 administered as a part of the court of claims.

## **CHAPTER 11. TAXATION.**

### **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

#### **§11-1C-1. Legislative findings.**

1 (a) The Legislature hereby finds and declares that  
2 all property in this state should be fairly and equitably  
3 valued wherever it is situated so that all citizens will  
4 be treated fairly and no individual species or class of  
5 property will be overvalued or undervalued in relation  
6 to all other similar property within each county and  
7 throughout the state.

8 (b) The Legislature by this article seeks to create a  
9 method to establish and maintain fair and equitable  
10 values for all property. The Legislature does not  
11 intend by this article to implement the reappraisal as  
12 conducted under articles one-a and one-b of this  
13 chapter nor does it intend to affect tax revenue in any  
14 manner.

15 (c) The Legislature finds that requiring the valua-  
16 tion of property occur in three-year cycles with an  
17 annual adjustment of assessments as to those proper-  
18 ties for which a change in value is discovered shall not  
19 violate the equal and uniform provision of section one,  
20 article ten of the West Virginia Constitution, the  
21 Legislature further finding that such three-year cycle  
22 and annual adjustment are an integral and indispens-  
23 able part of a systematic review of all properties in  
24 order to achieve equality of assessed valuation within  
25 and among the counties of this state. Notwithstanding  
26 such finding, the Legislature intends to permit the  
27 assessors and the board of public works to place  
28 proportionately uniform percentage changes in values  
29 on the books during the two tax years preceding the  
30 tax year beginning on the first day of July, one  
31 thousand nine hundred ninety-three, in accordance  
32 with the provisions of section seven of this article.

33 (d) The Legislature deems that the goal of this

34 article is that by the end of the three-year cycle  
35 contemplated by this article, and thereafter from year  
36 to year, all property shall be annually assessed at sixty  
37 percent of its then current fair market value except  
38 for the values derived for farms and managed timber-  
39 land properties, which are to be valued as prescribed  
40 by this article one-c and article four of this chapter.

**§11-1C-3. Property valuation training and procedures  
commission generally; appointment; term of  
office; meetings; compensation.**

1 (a) There is hereby created, under the department  
2 of tax and revenue, a property valuation training and  
3 procedures commission which consists of the state tax  
4 commissioner, or a designee, who shall serve as  
5 chairperson of the commission, three county assessors,  
6 five citizens of the state, one of which shall be a  
7 certified appraiser, and two county commissioners.  
8 The assessors, five citizen members and two county  
9 commissioners shall be appointed by the governor  
10 with the advice and consent of the Senate. For each  
11 assessor to be appointed, the West Virginia assessors  
12 association shall nominate three assessors, no more  
13 than two of whom shall belong to the same political  
14 party, and shall submit such list of nominees to the  
15 governor. For each of the two county commissioners to  
16 be appointed, the county commissioner's association of  
17 West Virginia shall nominate three commissioners, no  
18 more than two of whom shall belong to the same  
19 political party, and shall submit such list of nominees  
20 to the governor. Except for the tax commissioner,  
21 there may not be more than one member from any  
22 one county. No more than seven members of the  
23 commission shall belong to the same political party:  
24 *Provided*, That any member of the commission who is  
25 a direct party to any dispute before the board shall  
26 excuse himself or herself from any consideration or  
27 vote regarding the dispute. By the first day of Novem-  
28 ber, one thousand nine-hundred ninety, the governor  
29 shall appoint the fifth citizen member, who shall serve  
30 a two-year term.

31 (b) All members, except the tax commissioner, shall

32 serve for four-year terms: *Provided*, That of the  
 33 members initially appointed, two assessors, one county  
 34 commission member and two citizens shall serve two-  
 35 year terms, and one assessor, one county commis-  
 36 sioner member and three citizen members shall serve  
 37 four-year terms. Any assessor member and county  
 38 commissioner member ceases to be a member imme-  
 39 diately upon leaving the office of assessor or county  
 40 commissioner. Members shall remain members of the  
 41 commission until their successors have been  
 42 appointed. In case of a vacancy occurring prior to the  
 43 end of the term of a member, a replacement shall be  
 44 appointed within thirty days in the same manner as  
 45 the member was appointed and shall serve until the  
 46 end of the term of the member so replaced.

47 (c) The tax commissioner shall call the first meeting  
 48 of the commission within thirty days of the appoint-  
 49 ment of the assessor, county commissioner and citizen  
 50 members. Subsequently, meetings shall be at the call  
 51 of the chairperson or at the written request of any  
 52 four members, except that the commission shall meet  
 53 at least twice annually. Assessor members, county  
 54 commissioner members and the tax commissioner  
 55 shall serve without compensation, and citizen  
 56 members shall receive fifty dollars per day for each  
 57 day of actual service rendered. All members shall be  
 58 reimbursed for all reasonable and necessary expenses  
 59 actually incurred in the performance of their duties as  
 60 members of the commission.

61 (d) The commission shall be funded by an appropri-  
 62 ation by the Legislature through a separate line item  
 63 appropriated to the state tax commissioner.

**§11-1C-4. Commission powers and duties; rulemaking.**

1 (a) On or before the first day of October, one  
 2 thousand nine hundred ninety, and thereafter as  
 3 necessary the property valuation training and proce-  
 4 dures commission shall perform the following duties:

5 (1) Devise training and certification criteria for  
 6 county assessors and their employees and members of  
 7 county commissions, which shall include a definition

8 of "appropriate staff member" as the term is used in  
9 section six of this article relating to required training,  
10 which definition shall include deputy assessors as  
11 provided for in section three, article two of this  
12 chapter;

13 (2) Establish uniform, statewide procedures and  
14 methodologies for the mapping, visitation, identifica-  
15 tion and collection of information on the different  
16 species of property, which procedures and methodolo-  
17 gies shall include reasonable requirements for visita-  
18 tion of property, including a requirement that a good  
19 faith effort be made to contact any owner of owner-  
20 occupied residential property: *Provided*, That the  
21 commission is not authorized to establish the methods  
22 to value real and personal property, but shall have the  
23 authority to approve such methods;

24 (3) Develop an outline of items to be included in the  
25 county property valuation plan required in section  
26 seven of this article, which shall include information  
27 to assist the property valuation training and proce-  
28 dures commission in its determination of the distribu-  
29 tion of state funds provided pursuant to section eight  
30 of this article.

31 (b) On or before the first day of July, one thousand  
32 nine hundred ninety-one, the commission shall estab-  
33 lish objective criteria for the evaluation of the perfor-  
34 mance of the duties of county assessors and the tax  
35 commissioner.

36 (c) In the event the tax commissioner and a county  
37 assessor cannot agree on the content of the plan  
38 required under section seven of this article, the  
39 commission shall examine the plan and the objections  
40 of the tax commissioner and shall resolve the dispute  
41 on or before the first day of the fiscal year following  
42 the fiscal year in which the plan was submitted to the  
43 commission for resolution.

44 (d) The commission shall have the power to make  
45 such rules as it deems necessary to carry out the  
46 provisions of this section, which rules shall include  
47 procedures for the maintenance, use, sale and repro-

48 duction of microfilm, photography and tax maps. Any  
 49 rules adopted by the commission prior to the first day  
 50 of October, one thousand nine hundred ninety, under  
 51 subsection (a) of this section are exempt from the  
 52 provisions of article three of chapter twenty-nine-a of  
 53 this code: *Provided*, That the commission shall file a  
 54 copy of any rule so exempted from the provisions of  
 55 chapter twenty-nine-a of this code with the legislative  
 56 rule-making review committee created pursuant to  
 57 section eleven, article three of said chapter prior to the  
 58 thirtieth day of November, one thousand nine hun-  
 59 dred ninety.

60 (e) The commission shall have the authority to make  
 61 and enter into all contracts and agreements necessary  
 62 or incidental to the performance of its duties and the  
 63 execution of its powers under this article.

64 (f) In order to fund the costs of the requirements of  
 65 this article, the valuation commission shall have the  
 66 authority, on a one time basis, to borrow five million  
 67 dollars and to distribute such funds according to need  
 68 and the valuation plan submitted by the counties.  
 69 Upon request of the valuation commission, the state  
 70 board of investments shall loan, under commercially  
 71 reasonable terms to be determined by the parties, up  
 72 to five million dollars to the valuation commission, on  
 73 a one-time basis, from one of the various funds  
 74 administered by the state board of investments.

75 (g) The commission shall be required, in the event  
 76 that the tax commissioner has failed to do so, to  
 77 appoint one or more special assessors if it is the  
 78 determination of the commission that an assessor has  
 79 substantially failed to perform the duties required by  
 80 sections seven and eight of this article. A writ of  
 81 mandamus shall be the proper remedy if the commis-  
 82 sion fails to perform any of its duties required by law.

#### **§11-1C-5. Tax commissioner powers and duties.**

1 (a) In addition to the powers and duties of the tax  
 2 commissioner in other provisions of this article and  
 3 this code, the tax commissioner shall have the power  
 4 and duty to:

5 (1) Perform such duties and exercise such powers as  
6 may be necessary to accomplish the purposes of this  
7 article;

8 (2) Determine the methods of valuation for both real  
9 and personal property in accordance with the  
10 following:

11 (A) As to personal property, the tax commissioner  
12 shall provide a method to appraise each major specie  
13 of personal property in the state so that all such items  
14 of personal property are valued in the same manner  
15 no matter where situated in the state, shall transmit  
16 these methods to each county assessor who shall use  
17 these methods to value the various species of personal  
18 property. The tax commissioner shall periodically  
19 conduct such studies as are necessary to determine  
20 that such methods are being followed. Such method  
21 shall be in accordance with the provisions of article  
22 five of this chapter: *Provided*, That notwithstanding  
23 any other provision of this code to the contrary, the  
24 several county assessors shall appraise motor vehicles  
25 as follows: The state tax commissioner shall annually  
26 compile a schedule of automobile values based upon  
27 the lowest values shown in a nationally accepted used  
28 car guide, which said schedule shall be furnished to  
29 each assessor and shall be used by the several county  
30 assessors to determine the assessed value for all motor  
31 vehicles in an amount equal to sixty percent of said  
32 lowest values.

33 (B) As to managed timberland as defined in section  
34 two of this article, the tax commissioner shall provide  
35 a method to appraise such property in the state so that  
36 all such property is valued in the same manner no  
37 matter where it is situated in the state, which shall be  
38 a valuation based on its use and productive potential  
39 as managed timberland, which may be accorded  
40 special valuation as forestlands as authorized by  
41 section fifty-three, article six of the Constitution of  
42 West Virginia: *Provided*, That timberland that does not  
43 qualify for identification as managed timberland shall  
44 be valued at market value: *Provided, however*, That  
45 the tax commissioner may not implement any rules or

46 regulations in title one hundred ten, which relate to  
47 valuation or classification of timberland: *Provided*  
48 *further*, That on or before the first day of October, one  
49 thousand nine hundred ninety, the tax commissioner  
50 shall, in accordance with chapter twenty-nine-a of this  
51 code, promulgate new rules relating to the valuation  
52 and classification of timberland.

53 (C) As to farmland used, occupied and cultivated by  
54 an owner or bona fide tenant, the tax commissioner  
55 shall provide a method to appraise such property in  
56 the state so that all such property is valued in the  
57 same manner no matter where it is situated in the  
58 state, which valuation shall be arrived at according to  
59 the fair and reasonable value of the property for the  
60 purpose for which it is actually used regardless of  
61 what the value of the property would be if used for  
62 some other purpose, in accordance with section one,  
63 article three of this chapter and as authorized by  
64 subsection B, section one-b, article ten of the Consti-  
65 tution of West Virginia.

66 (D) As to public utility property, the tax commis-  
67 sioner shall prescribe appropriate methods for the  
68 appraisal of the various types of property subject to  
69 taxation as public utilities and the types of property  
70 which are to be included in the operating property of  
71 a public utility and thereby not subject to taxation by  
72 the county assessor. Only parcels or other property, or  
73 portions thereof, which are an integral part of the  
74 public utility's function as a utility shall be included as  
75 operating property and assessed by the board of public  
76 works under provisions of article six of this chapter;

77 (3) Evaluate the performance of each assessor based  
78 upon the criteria established by the commission and  
79 each county's approved plan and take appropriate  
80 measures to require any assessor who does not meet  
81 these criteria or adequately carry out the provisions of  
82 the plan to correct any deficiencies. Such evaluation  
83 shall include the periodic review of the progress of  
84 each assessor in conducting the appraisals required in  
85 sections seven and nine of this article and in following  
86 the approved valuation plan. If the tax commissioner



87 determines that an assessor has substantially failed to  
88 perform the duties required by said sections, the tax  
89 commissioner shall take all necessary steps, including  
90 the appointment of one or more special assessors in  
91 accordance with the provisions of section one, article  
92 three of this chapter, or utilize such other authority as  
93 the commissioner has over county assessors pursuant  
94 to other provisions of this code as may be necessary to  
95 complete the tasks and duties imposed by this article:  
96 *Provided*, That a writ of mandamus shall be the  
97 appropriate remedy if the tax commissioner fails to  
98 perform his or her statutory duty provided for in  
99 section five, article one of this chapter.

100 (4) Submit to the Legislature, on or before the  
101 fifteenth day of February of each year, a preliminary  
102 statewide aggregate tax revenue projection and other  
103 information which shall assist the Legislature in its  
104 deliberations regarding county board of education levy  
105 rates pursuant to section six-f, article eight of this  
106 chapter, which information shall include any amount  
107 of reduction required by said section six-f;

108 (5) Maintain the valuations each year by making or  
109 causing to be made such surveys, examinations, audits  
110 and investigations of the value of the several classes of  
111 property in each county which should be listed and  
112 taxed under the several classifications; and

113 (6) Establish by uniform rules a procedure for the  
114 sale of computer generated material and appraisal  
115 manuals. Any funds received as a result of the sale of  
116 such reproductions shall be deposited to the appropri-  
117 ate account from which the payment for reproduction  
118 is made.

119 (b) The tax commissioner may adopt any regulation  
120 adopted prior to the first day of January, one thousand  
121 nine hundred ninety, pursuant to article one-a of this  
122 chapter, which adoption shall not constitute an imple-  
123 mentation of the statewide mass reappraisal of prop-  
124 erty. Such adoption, including context modifications  
125 made necessary by the enactment of this article, shall  
126 occur on or before the first day of July, one thousand

127 nine hundred ninety-one, through inclusion in the  
 128 plan required by section ten of this article or inclusion  
 129 in the minute record of the valuation commission.  
 130 Upon the adoption of any such regulations, any  
 131 modification or repeal of such regulation shall be in  
 132 accordance with the provisions of article three, chap-  
 133 ter twenty-nine-a of this code.

**§11-1C-7. Duties of county assessors; property to be  
 appraised at fair market value; exceptions;  
 initial equalization; valuation plan.**

1 (a) Except for property appraised by the state tax  
 2 commissioner under section ten of this article and  
 3 property appraised and assessed under article six of  
 4 this chapter, all assessors shall, within three years of  
 5 the approval of the county valuation plan required  
 6 pursuant to this section, appraise all real and personal  
 7 property in their jurisdiction at fair market value  
 8 except for special valuation provided for farmland and  
 9 managed timberland. They shall utilize the procedures  
 10 and methodologies established by the property valua-  
 11 tion training and procedures commission and the  
 12 valuation system established by the tax commissioner.

13 (b) In determining the fair market value of the  
 14 property in their jurisdictions, assessors may use as an  
 15 aid to valuation any information available on the  
 16 character and values of such property including, but  
 17 not limited to, the updated information found on any  
 18 statewide electronic data processing system network  
 19 established pursuant to section twenty-one, article  
 20 one-a of this chapter. Valuations shall not be based  
 21 exclusively on such statewide electronic data process-  
 22 ing system network, and usage of the information on  
 23 such files as an aid to proper valuation shall not  
 24 constitute an implementation of the statewide mass  
 25 reappraisal of property.

26 (c) Before beginning the valuation process, each  
 27 assessor shall develop a county valuation plan for  
 28 using information currently available, for checking its  
 29 accuracy and for correcting any errors found. The plan  
 30 must be submitted to the tax commissioner on or

31 before the first day of December, one thousand nine  
32 hundred ninety, for review and approval, and such  
33 plan must be revised as necessary and resubmitted  
34 every three years thereafter. Whenever a plan is  
35 submitted to the tax commissioner, a copy shall also be  
36 submitted to the county commission of that county  
37 and the property valuation training and procedures  
38 commission, and that county commission and the  
39 property valuation training and procedures commis-  
40 sion may forward comments to the tax commissioner.  
41 The tax commissioner shall respond to any plan  
42 submitted or resubmitted within sixty days of its  
43 receipt. The valuation process shall not begin nor shall  
44 funds provided in section eight of this article be  
45 available until the plan has received approval by the  
46 tax commissioner: *Provided*, That any initial plan that  
47 has not received approval by the commissioner prior  
48 to the first day of May, one thousand nine hundred  
49 ninety-one, shall be submitted on or by such date to  
50 the valuation commission for resolution prior to the  
51 first day of July, one thousand nine hundred ninety-  
52 one, by which date all counties shall have an approved  
53 valuation plan in effect.

54 (d) Upon approval of the valuation plan, the assessor  
55 shall immediately begin implementation of the valua-  
56 tion process. Any change in value discovered subse-  
57 quent to the certification of values by the assessor to  
58 the county commission, acting as the board of equal-  
59 ization and review, in any given year shall be placed  
60 upon the property books for the next certification of  
61 values: *Provided*, That notwithstanding any other  
62 provision of this code to the contrary, the property  
63 valuation training and procedures commission may  
64 authorize the tax commissioner to approve a valuation  
65 plan and the board of public works to submit such a  
66 plan which would permit the placement of proportion-  
67 ately uniform percentage changes in values on the  
68 books that estimate the percentage difference between  
69 the current assessed value and sixty percent of the fair  
70 market value for classes or identified sub-classes of  
71 property and distribute the change between the two  
72 tax years preceding the tax year beginning on the first

73 day of July, one thousand nine hundred ninety-three.  
74 This procedure may be used in lieu of placing individ-  
75 ual values on the books at sixty percent of value as  
76 discovered, or may be in addition to such valuation. If  
77 such procedure is adopted by a county, then property  
78 whose reevaluation is the responsibility of the board of  
79 public works and the state tax commissioner shall  
80 have its values estimated and placed on the books in  
81 like manner. Such estimates shall be based on the best  
82 information obtained by the assessor, the board of  
83 public works and the tax commissioner, and the  
84 changes shall move those values substantially towards  
85 sixty percent of fair market value, such sixty percent  
86 to be reached on or before the first day of July, one  
87 thousand nine hundred ninety-three.

88 (e) The county assessor shall establish and maintain  
89 as official records of the county tax maps of the entire  
90 county drawn to scale or aerial maps, which maps  
91 shall indicate all property and lot lines, set forth  
92 dimensions or areas, indicate whether the land is  
93 improved, and identify the respective parcels or lots  
94 by a system of numbers or symbols and numbers,  
95 whereby the ownership of such parcels and lots can be  
96 ascertained by reference to the appropriate records:  
97 *Provided*, That all such records shall be established  
98 and maintained and the sale or reproduction of  
99 microfilm, photography and maps shall be in accor-  
100 dance with legislative rules promulgated by the  
101 commission.

102 (f) Willing and knowing refusal of the assessor or the  
103 county commission to comply with and effect the  
104 provisions of this article, or to correct any deficiencies  
105 as may be ordered by the tax commissioner with the  
106 concurrence of the valuation commission under any  
107 authority granted pursuant to this article or other  
108 provisions of this code, shall constitute grounds for  
109 removal from office. Such removal may be appealed to  
110 the circuit court.

**§11-1C-8. Additional funding for assessors' offices; mainte-  
nance funding.**

1 (a) In order to finance the extra costs associated with  
2 the valuation and training mandated by this article,  
3 there is hereby created a revolving valuation fund in  
4 each county which shall be used exclusively to fund  
5 the assessor's office. The valuation and training  
6 programs, for the fiscal year commencing on the first  
7 day of July, one thousand nine hundred ninety, shall  
8 be funded through the valuation commission and  
9 distributed in accordance with need on a county by  
10 county basis and the county's approved plan. The  
11 necessary funds shall be transferred to each county's  
12 valuation fund following approval of the plans submit-  
13 ted by the respective assessors. The said funds shall be  
14 transferred by the valuation commission on condition  
15 that no persons shall be hired hereunder without the  
16 approval of the valuation commission, such hirings  
17 shall be without regard to political favor or affiliation,  
18 and such persons hired hereunder shall be subject to  
19 the provisions of the ethics act in chapter six-b of this  
20 code, including, but not limited to, the conflict of  
21 interest provisions thereunder. Notwithstanding any  
22 other provisions of this code to the contrary, assessors  
23 may employ citizens of any West Virginia county for  
24 the purpose of performing, assessing and appraising  
25 duties under this chapter upon approval of such  
26 employment by the valuation commission.

27 During the fiscal year commencing the first day of  
28 July, one thousand nine hundred ninety-four, and  
29 thereafter as necessary, any county receiving moneys  
30 provided by the valuation commission under this  
31 section shall use the county's valuation fund first to  
32 repay the valuation commission the money so received  
33 plus accrued interest: *Provided*, That the fund should  
34 not drop below one percent of the total municipal,  
35 county commission and county school board revenues  
36 generated by application of the respective regular levy  
37 rates.

38 (b) To finance the ongoing extra costs associated  
39 with the valuation and training mandated by this  
40 article, beginning with the fiscal year commencing on  
41 the first day of July, one thousand nine hundred

42 ninety-one, and for a period of at least three consec-  
43 utive years, an amount equal to two percent of the  
44 previous year's projected tax collections from the  
45 regular levy set by, or for, the county commission, the  
46 county school board and any municipality in the  
47 county shall be prorated as to each levying body, set  
48 aside and placed in the valuation fund. Such two  
49 percent payment shall continue in any county where  
50 funds borrowed from the state pursuant to subsection  
51 (a) of this section have not been fully repaid until such  
52 moneys, together with accrued interest thereon, has  
53 been fully repaid or until the first day of July, one  
54 thousand nine hundred ninety-four, whichever comes  
55 last. Each year thereafter, the valuation fund shall be  
56 continued at an annual amount of one percent of the  
57 previous year's projected tax collections from such  
58 regular levies: *Provided*, That county commissions and  
59 municipalities may present written evidence, prior to  
60 the thirty-first day of March each year, acceptable to  
61 the valuation commission showing that a lesser  
62 amount would be adequate to fund the extra costs  
63 associated with the valuation mandated by section  
64 seven of this article: *Provided, however*, That the  
65 valuation commission shall meet prior to the fifteenth  
66 day of April to consider and decide upon all written  
67 evidence so submitted: *Provided further*, That the  
68 county commissions, in addition, shall fund the county  
69 assessor's office at least the level of funding provided  
70 during the fiscal year in which this section was  
71 initially enacted.

72 These additional funds are intended to enable  
73 assessors to maintain current valuations and to per-  
74 form the periodic reevaluation required under section  
75 nine of this article. Beginning with the fiscal year  
76 ending the thirtieth day of June, one thousand nine  
77 hundred ninety-six, any unexpended balance in the  
78 valuation fund at the end of the fiscal year shall expire  
79 back proportionately into the respective accounts of  
80 the levying bodies.

81 (c) Any funds provided by the valuation commission  
82 shall be distributed among the counties by the prop-

erty valuation training and procedures commission based upon workload, need and other relevant factors as shown by the valuation plans developed under section seven of this article.

(d) Moneys due the valuation fund shall be deposited by the sheriff of the county on a monthly basis for the benefit of the assessor and shall be available to and may be spent by the assessor without prior approval of the county commission, which shall not exercise any control over the fund. Clerical functions related to the fund shall be performed in the same manner as done with other normal funding provided to the assessor.

**§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.**

(a) As used in this section:

(1) "Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(2) "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the state tax commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return

25 pursuant to this section.

26 (c) The state tax commissioner shall value all  
27 industrial property in the state at its fair market value  
28 within three years of the approval date of the plan for  
29 industrial property required in subsection (e) of this  
30 section. The commissioner shall thereafter maintain  
31 accurate values for all such property. The tax commis-  
32 sioner shall forward each industrial property appraisal  
33 to the county assessor of the county in which that  
34 property is located and the assessor shall multiply each  
35 such appraisal by sixty percent and include the  
36 resulting assessed value in the land book or the  
37 personal property book, as appropriate for each tax  
38 year. The commissioner shall supply support data that  
39 the assessor might need to evaluate the appraisal.

40 (d) Within three years of the approval date of the  
41 plan required for natural resources property required  
42 pursuant to subsection (e) of this section, the state tax  
43 commissioner shall determine the fair market value as  
44 defined in section one, article three of this chapter of  
45 all natural resources property in the state. The  
46 commissioner shall thereafter maintain accurate  
47 values for all such property.

48 (1) In order to qualify for identification as managed  
49 timberland for property tax purposes the owner must  
50 annually certify, in writing to the division of forestry,  
51 that the property meets the definition of managed  
52 timberland as set forth in this article and contracts to  
53 manage property according to a plan that will main-  
54 tain the property as managed timberland. In addition,  
55 each owner's certification must state that forest  
56 management practices will be conducted in accordance  
57 with approved practices from the publication "Best  
58 Management Practices for Forestry". Property certi-  
59 fied as managed timberland shall be valued according  
60 to its use and productive potential. The tax commis-  
61 sioner shall promulgate rules and regulations for  
62 certification as managed timberland.

63 (2) In the case of all other natural resources prop-  
64 erty, the commissioner shall develop an inventory on



65 a county by county basis of all such property and may  
66 use any resources, including, but not limited to,  
67 geological survey information; exploratory, drilling,  
68 mining and other information supplied by natural  
69 resources property owners; and maps and other  
70 information on file with the state department of  
71 energy. Any information supplied by natural resources  
72 owners or any proprietary or otherwise privileged  
73 information supplied by the state department of  
74 energy shall be kept confidential unless needed to  
75 defend an appraisal challenged by a natural resources  
76 owner. Formulas for natural resources valuation may  
77 contain differing variables based upon known geolog-  
78 ical or other common factors. The tax commissioner  
79 shall forward each natural resources property  
80 appraisal to the county assessor of the county in which  
81 that property is located and the assessor shall multiply  
82 each such appraisal by sixty percent and include the  
83 resulting assessed value in the land book or the  
84 personal property book, as appropriate, for each tax  
85 year. The commissioner shall supply support data that  
86 the assessor might need to explain or defend the  
87 appraisal. The commissioner shall directly defend any  
88 challenged appraisal when the assessed value of the  
89 property in question exceeds two million dollars or an  
90 owner challenging an appraisal holds or controls  
91 property situated in the same county with an assessed  
92 value exceeding two million dollars. At least every five  
93 years, the commissioner shall review current technol-  
94 ogy for the recovery of natural resources property to  
95 determine if valuation methodologies need to be  
96 adjusted to reflect changes in value which result from  
97 development of new recovery technologies.

98 (e) The tax commissioner shall develop a plan for  
99 the valuation of industrial property and a plan for the  
100 valuation of natural resources property. The plans  
101 shall include expected costs and reimbursements, and  
102 shall be submitted to the property valuation training  
103 and procedures commission on or before the first day  
104 of January, one thousand nine hundred ninety-one,  
105 for its approval on or before the first day of July of  
106 such year. Such plan shall be revised, resubmitted to

107 the commission and approved every three years  
108 thereafter.

109 (f) To perform the valuation duties under this  
110 section, the state tax commissioner shall have the  
111 authority to contract with a competent property  
112 appraisal firm or firms to assist with or to conduct the  
113 valuation process as to any discernible species of  
114 property statewide if the contract and the entity  
115 performing such contract is specifically included in a  
116 plan required by subsection (e) of this section or  
117 otherwise approved by the commission. If the tax  
118 commissioner desires to contract for valuation services  
119 only in one county or a group of counties, the contract  
120 must be approved by the commission.

121 (g) The county assessor may accept the appraisal  
122 provided, pursuant to this section, by the state tax  
123 commissioner: *Provided*, That if the county assessor  
124 fails to accept the appraisal provided by the state tax  
125 commissioner, the county assessor shall show just  
126 cause to the valuation commission for the failure to  
127 accept such appraisal and shall further provide to the  
128 valuation commission a plan by which a different  
129 appraisal will be conducted.

130 (h) The costs of appraising the industrial and natural  
131 resources property within each county, and any costs  
132 of defending same shall be paid by the state: *Provided*,  
133 That the office of the state attorney general shall  
134 provide legal representation on behalf of the tax  
135 commissioner or assessor, at no cost, in the event the  
136 industrial and natural resources appraisal is chal-  
137 lenged in court.

138 (i) For purposes of revaluing managed timberland as  
139 defined in section two of this article, any increase or  
140 decrease in valuation by the commissioner shall not  
141 become effective prior to the first day of July, one  
142 thousand nine hundred ninety-one. The property  
143 owner may request a hearing by the director of the  
144 division of forestry, who may thereafter rescind the  
145 disqualification or allow the property owner a reason-  
146 able period of time in which to qualify the property.

147 A property owner may appeal a disqualification to the  
148 circuit court of the county in which the property is  
149 located.

**§11-1C-12. Board of equalization and review; assessments;  
board of public works.**

1 (a) As valuations of property in a county are com-  
2 pleted to the extent that a total valuation of property  
3 can be determined, such valuation shall be delivered  
4 by the assessor to the county commission, and the  
5 county commission, sitting as a board of equalization  
6 and review, shall use such appraised valuations as a  
7 basis for determining the true and actual value for  
8 assessment purposes of the several classes of property.

9 (b) For the tax year subsequent to the end of the  
10 initial valuation period in each county, and for each  
11 year thereafter, each county shall implement a uni-  
12 form assessment that is equal to sixty percent of the  
13 most current appraised value for all real and personal  
14 property situated within the county. Such implemen-  
15 tation shall be in accordance with provisions to be  
16 included in the plan required by section seven of this  
17 article.

18 (c) Until such time as the uniform sixty percent  
19 assessment required in subsection (b) is effected, the  
20 total assessed valuation in each of the four classes of  
21 property shall not be less than sixty percent nor more  
22 than one hundred percent of the appraised valuation  
23 of each said class of property.

24 (d) The board of public works, in performing the  
25 duties required in article six of this chapter relating to  
26 the assessment of public service businesses, shall  
27 submit on or before the first day of January, one  
28 thousand nine hundred ninety-one, a plan to the  
29 property valuation training and procedures commis-  
30 sion for implementing on or before the first day of  
31 July, one thousand nine-hundred ninety-four, and for  
32 each year thereafter, a uniform assessment that is  
33 equal to sixty percent of the most current valuation  
34 for all property valued by the board of public works.  
35 Such plan shall be approved on or before the first day

36 of July, one thousand nine hundred ninety-one.

**ARTICLE 3. ASSESSMENTS GENERALLY.**

**§11-3-2a. Notice of increased assessment required; exceptions to notice; notice of special valuation.**

1 (a) If the assessor determines the assessed valuation  
2 of any item of real property is more than ten percent  
3 greater than the valuation assessed for that item in the  
4 last tax year and the increase be entered in the  
5 property books as provided in section nineteen of this  
6 article, the assessor shall give notice of the increase to  
7 the person assessed or the person controlling the  
8 property as provided in section two of this article. The  
9 notice must be given at least fifteen days prior to the  
10 first meeting in February at which the county com-  
11 mission meets as the board of equalization and review  
12 for that tax year and advise the person assessed or the  
13 person controlling the property of his right to appear  
14 and seek an adjustment in the assessment. The notice  
15 shall be made by first class United States postage  
16 mailed to the address of the person assessed or the  
17 person controlling the property for payment of tax on  
18 the item in the previous year, unless there was a  
19 general increase of the entire valuation in any one or  
20 more districts in which case the notice shall be by  
21 publication thereof by a Class II-0 legal advertisement  
22 in compliance with the provisions of article three,  
23 chapter fifty-nine of this code, and the area for the  
24 publication is the county. The requirement of notice  
25 under this section is satisfied and waived if personal  
26 notice of the increase is shown by:

27 (1) The taxpayer having signed the assessment form  
28 after it had been completed showing the increase;

29 (2) Notice was given as provided in section three-a of  
30 this article; or

31 (3) The person so assessed executing acknowledg-  
32 ment of the notice of the increase.

33 (b) During the initial reappraisal of all property  
34 under section seven, article one-c of this chapter, the  
35 tax commissioner and each county assessor shall send

36 every person <sup>owning - DW</sup> owning or controlling property appraised  
37 by the tax commissioner or the county assessor, as the  
38 case may be, a pamphlet which explains the reap-  
39 praisal process and its equalization goal in a detailed  
40 yet informal manner. The property valuation training  
41 and procedures commission, created under section  
42 three, article one-c of this chapter, shall design the  
43 pamphlet for use in all counties while allowing  
44 individual county information to be included if it  
45 determines that the information would improve  
46 understanding of the process.

**ARTICLE 8. LEVIES.**

**§11-8-6e. Effect on regular levy rate when appraisal results  
in tax increase; public hearings.**

1 (a) Notwithstanding any other provision of law,  
2 where any annual appraisal, triennial appraisal or  
3 general valuation of property would produce an  
4 assessment that would cause an increase of one  
5 percent or more in the total projected property tax  
6 revenues that would be realized were the then current  
7 regular levy rates by the county commission and the  
8 municipalities to be imposed, the rate of levy shall be  
9 reduced proportionately as between the county com-  
10 mission and the municipalities and for all classes of  
11 property for the forthcoming tax year so as to cause  
12 such rate of levy to produce no more than one  
13 hundred one percent of the previous year's projected  
14 property tax revenues from extending the county  
15 commission and municipality levy rates, unless there  
16 has been compliance with subsection (c) of this section.

17 An additional appraisal or valuation due to new  
18 construction or improvements to existing real prop-  
19 erty, including beginning recovery of natural resour-  
20 ces, and newly acquired personal property shall not be  
21 an annual appraisal or general valuation within the  
22 meaning of this section, nor shall the assessed value of  
23 such improvements be included in calculating the new  
24 tax levy for purposes of this section. Special levies  
25 shall not be included in the reduced levy calculation  
26 set forth in subsection (b) of this section.

27 (b) The reduced rates of levy shall be calculated in  
28 the following manner:

29 (1) The total assessed value of each class of property  
30 as it is defined by section five, article eight of this  
31 chapter for the assessment period just concluded shall  
32 be reduced by deducting the total assessed value of  
33 newly created properties not assessed in the previous  
34 year's tax book for each class of property;

35 (2) The resulting net assessed value of Class I  
36 property shall be multiplied by .01; the value of Class  
37 II by .02; and the values of Class III and IV, each by  
38 .04;

39 (3) Total the current year's property tax revenue  
40 resulting from regular levies for each county commis-  
41 sion and municipality and multiply the resulting sum  
42 by one hundred one percent: *Provided*, That the one  
43 hundred one percent figure shall be increased by the  
44 amount the county's or municipality's increased levy  
45 provided for in subsection (b), section eight, article  
46 one-c of this chapter.

47 (4) Divide the total regular levy tax revenues, thus  
48 increased in subdivision (3), above, by the total  
49 weighted net assessed value as calculated in paragraph  
50 two of this section and multiply the resulting product  
51 by one hundred; the resulting number is the Class I  
52 regular levy rate, stated as cents-per-one hundred  
53 dollars of assessed value;

54 (5) The Class II rate is two times the Class I rate;  
55 Classes III and IV, four times the Class I rate as  
56 calculated in the preceding subdivision.

57 (c) The governing body of a county or municipality  
58 may, after conducting a public hearing, which may be  
59 held at the same time and place as the annual budget  
60 hearing, increase the rate above the reduced rate  
61 required in this section if any such increase is deemed  
62 to be necessary by such governing body: *Provided*,  
63 That in no event shall the governing body of a county  
64 or municipality increase the rate above the reduced  
65 rate required by subsection (b) of this section for any

66 single year in a manner which would cause total  
67 property tax revenues accruing to the governing body  
68 of the county or municipality, excepting additional  
69 revenue attributable to assessed valuations of newly  
70 created properties not assessed in the previous year's  
71 tax book for each class of property, to exceed by more  
72 than ten percent those property tax revenues received  
73 by the governing body of the county or municipality  
74 for the next preceding year: *Provided, however,* That  
75 this provision shall not restrict the ability of a county  
76 or municipality to enact excess levies as authorized  
77 under existing statutory or constitutional provisions.

78 Notice of the public hearing and the meeting in  
79 which the levy rate shall be on the agenda shall be  
80 given at least seven days before the date for each  
81 public hearing by the publication of a notice in at least  
82 one newspaper of general circulation in such county or  
83 municipality: *Provided,* That a Class IV town or  
84 village as defined in section two, article one, chapter  
85 eight of this code, in lieu of the publication notice  
86 required by this subsection, may post no less than four  
87 notices of each public hearing, which posted notices  
88 shall contain the information required by the publica-  
89 tion notice and which shall be in available, visible  
90 locations including the town hall. The notice shall be  
91 at least the size of one-eighth page of a standard size  
92 newspaper or one-fourth page of a tabloid size news-  
93 paper, and the headline in the advertisement shall be  
94 in a type no smaller than twenty-four point. The  
95 publication notice shall be placed outside that portion,  
96 if any, of the newspaper reserved for legal notices and  
97 classified advertisements and shall also be published as  
98 a Class II-0 legal advertisement in accordance with the  
99 provisions of article three, chapter fifty-nine of this  
100 code. The publication area is the county. The notice  
101 shall be in the following form and contain the follow-  
102 ing information, in addition to such other information  
103 as the local governing body may elect to include:

104 NOTICE OF PROPOSED TAX INCREASE

105 The (name of the county or municipality) proposes  
106 to increase property tax levies.

107 1. Appraisal/Assessment Increase: Total assessed  
108 value of property, excluding additional assessments  
109 due to new or improved property, exceeds last year's  
110 total assessed value of property by \_\_\_\_\_ percent.

111 2. Lowered Rate Necessary to Offset Increased  
112 Assessment: The tax rate which would levy the same  
113 amount of property tax as last year, when multiplied  
114 by the new total assessed value of property with the  
115 exclusions mentioned above, would be \$ \_\_\_\_ per \$100 of  
116 assessed value for Class I property, \$ \_\_\_\_\_ per \$100 of  
117 assessed value for Class II  
118 property, \$ \_\_\_\_\_ per \$100 of assessed value for Class III  
119 and \$ \_\_\_\_\_ per \$100 of assessed value for Class IV  
120 property. These rates will be known as the "lowered  
121 tax rates".

122 3. Effective Rate Increase: The (name of the county  
123 or municipality) proposes to adopt a tax rate of \$ \_\_\_\_ per  
124 \$100 of assessed value for Class I property, \$ \_\_\_\_ per \$100  
125 of assessed value for Class II property, \$ \_\_\_\_ per \$100 of  
126 assessed value for Class III property and \$ \_\_\_\_ per \$100  
127 of assessed value for Class IV property. The difference  
128 between the lowered tax rates and the proposed rates  
129 would be \$ \_\_\_\_\_ per \$100, or \_\_\_\_\_ percent for Class I;  
130 \$ \_\_\_\_\_ per \$100, or \_\_\_\_\_ percent for Class II; \$ \_\_\_\_\_  
131 per \$100, or \_\_\_\_\_ percent for Class III and \$ \_\_\_\_\_ per  
132 \$100, or \_\_\_\_\_ percent for Class IV. These differences  
133 will be known as the "effective tax rate increases".

134 Individual property taxes may, however, increase at  
135 a percentage greater than or less than the above  
136 percentage.

137 4. Revenue produced last year: \$ \_\_\_\_\_

138 5. Revenue projected under the effective rate  
139 increases: \$ \_\_\_\_\_

140 6. Revenue projected from new property or  
141 improvements: \$ \_\_\_\_\_

142 7. General areas in which new revenue is to be  
143 allocated: A public hearing on the increases will be  
144 held on (date and time) at (meeting place). A decision  
145 regarding the rate increase will be made on (date and



146 time) at (meeting place).

147 (d) All hearings are open to the public. The govern-  
148 ing body shall permit persons desiring to be heard an  
149 opportunity to present oral testimony within such  
150 reasonable time limits as are determined by the  
151 governing body.

152 (e) This section shall be effective as to any regular  
153 levy rate imposed by the county commission or a  
154 municipality for taxes due and payable on or after the  
155 first day of July, one thousand nine hundred ninety-  
156 one. If any provision of this section is held invalid,  
157 such invalidity shall not affect other provisions or  
158 applications of this section which can be given effect  
159 without the invalid provision or its application and to  
160 this end the provisions of this section are declared to  
161 be severable.

**§11-8-6f. Effect on regular school board levy rate when  
appraisal results in tax increase.**

1 (a) Notwithstanding any other provision of law,  
2 where any annual appraisal, triennial appraisal or  
3 general valuation of property would produce a state-  
4 wide aggregate assessment that would cause an  
5 increase of one percent or more in the total property  
6 tax revenues that would be realized were the then  
7 current regular levy rates of the county boards of  
8 education to be imposed, the rate of levy for county  
9 boards of education shall be reduced uniformly state-  
10 wide and proportionately for all classes of property for  
11 the forthcoming tax year so as to cause such rate of  
12 levy to produce no more than one hundred one  
13 percent of the previous year's projected statewide  
14 aggregate property tax revenues from extending the  
15 county board of education levy rate, unless subsection  
16 (b) of this section is complied with. The reduced rates  
17 of levy shall be calculated in the following manner: (1)  
18 The total assessed value of each class of property as it  
19 is defined by section five, article eight of this chapter  
20 for the assessment period just concluded shall be

21 reduced by deducting the total assessed value of newly  
22 created properties not assessed in the previous year's  
23 tax book for each class of property; (2) the resulting  
24 net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values  
25 of Class III and IV, each by .04; (3) total the current  
26 year's property tax revenue resulting from regular  
27 levies for the boards of education throughout this state  
28 and multiply the resulting sum by one hundred one  
29 percent: *Provided*, That the one hundred one percent  
30 figure shall be increased by the amount the boards of  
31 educations' increased levy provided for in subsection  
32 (b), section eight, article one-c of this chapter; (4)  
33 divide the total regular levy tax revenues, thus  
34 increased in subdivision (3), above, by the total  
35 weighted net assessed value as calculated in paragraph  
36 two of this section and multiply the resulting product  
37 by one hundred; the resulting number is the Class I  
38 regular levy rate, stated as cents-per-one hundred  
39 dollars of assessed value; and (5) the Class II rate is  
40 two times the Class I rate; Classes III and IV, four  
41 times the Class I rate as calculated in the preceding  
42 subdivision.

44 An additional appraisal or valuation due to new  
45 construction or improvements, including beginning  
46 recovery of natural resources, to existing real property  
47 or newly acquired personal property shall not be an  
48 annual appraisal or general valuation within the  
49 meaning of this section, nor shall the assessed value of  
50 such improvements be included in calculating the new  
51 tax levy for purposes of this section. Special levies  
52 shall not be included in any calculations under this  
53 section.

54 (b) After conducting a public hearing, the Legisla-  
55 ture may, by act, increase the rate above the reduced  
56 rate required in subsection (a) of this section if any  
57 such increase is deemed to be necessary.

58 (c) This section shall be effective as to any regular  
59 levy rate imposed for the county boards of education  
60 for taxes due and payable on or after the first day of  
61 July, one thousand nine hundred ninety-one. If any

62 provision of this section is held invalid, such invalidity  
63 shall not affect other provisions or applications of this  
64 section which can be given effect without the invalid  
65 provision or its application and to this end the provi-  
66 sions of this section are declared to be severable.

**§11-8-6g. Effect on special levy rates when appraisal results  
in tax revenue increase; public hearings.**

1 (a) As to any special levy in effect on the first day  
2 of March, one thousand nine hundred ninety, and  
3 notwithstanding any other provision of law, where any  
4 annual appraisal, triennial appraisal or general valua-  
5 tion of property would produce an assessment that  
6 would cause an increase of four percent or more in the  
7 total projected property tax revenues that would be  
8 realized were the special levy rates then in effect by  
9 the county commission, the municipalities or the  
10 county board of education to be imposed, the local  
11 levying body shall comply with subsection (b) of this  
12 section.

13 An additional appraisal or valuation due to new  
14 construction or improvements to existing real prop-  
15 erty, including beginning recovery of natural resour-  
16 ces, and newly acquired personal property shall not be  
17 an annual appraisal or general valuation within the  
18 meaning of this section, nor shall the assessed value of  
19 such improvements be included in calculating the new  
20 tax levy for purposes of this section.

21 (b) Any local levying body projected to realize such  
22 increase greater than four percent shall conduct a  
23 public hearing no later than the twentieth day of  
24 March, which hearing may be held at the same time  
25 and place as the annual budget hearing. Notice of the  
26 public hearing and the meeting in which the levy rate  
27 shall be on the agenda shall be given at least seven  
28 days before the date for each public hearing by the  
29 publication of a notice in at least one newspaper of  
30 general circulation in such county or municipality:  
31 *Provided*, That a Class IV town or village as defined in  
32 section two, article one, chapter eight of this code, in  
33 lieu of the publication notice required by this subsec-

34 tion, may post no less than four notices of each public  
 35 hearing, which posted notices shall contain the infor-  
 36 mation required by the publication notice and which  
 37 shall be in available, visible locations including the  
 38 town hall. The notice shall be at least the size of one-  
 39 eighth page of a standard size newspaper or one-fourth  
 40 page of a tabloid size newspaper, and the headline in  
 41 the advertisement shall be in a type no smaller than  
 42 twenty-four point. The publication notice shall be  
 43 placed outside that portion, if any, of the newspaper  
 44 reserved for legal notices and classified advertisements  
 45 and shall also be published as a Class II-O legal  
 46 advertisement in accordance with the provisions of  
 47 article three, chapter fifty-nine of this code. The  
 48 publication area is the county. The notice shall be in  
 49 the following form and contain the following informa-  
 50 tion, in addition to such other information as the local  
 51 governing body may elect to include:

52 HEARING REGARDING SPECIAL LEVY RATES

53 The (name of the local levying body) hereby gives  
 54 notice that the special levy rate imposed by the (local  
 55 levying body) causes an increase in property tax  
 56 revenues due to increased valuations.

57 1. Appraisal/Assessment Increase: Total assessed  
 58 value of property, excluding additional assessments  
 59 due to new or improved property, exceeds last year's  
 60 total assessed value of property by ..... percent.

61 2. Current Year's Revenue Produced Under Special  
 62 Levy:

63 3. Projected Revenue Under Special Levy for Next  
 64 Tax Year:

65 4. Revenue Projected from New Property or  
 66 Improvements: \$ .....

67 5. General areas in which new revenue is to be  
 68 allocated:

69 A public hearing on the issue of special levy rates  
 70 will be held on (date and time) at (meeting place). A  
 71 decision regarding the special levy rate will be made

72 on (date and time) at (meeting place).

73 (c) All hearings are open to the public, and the local  
74 levying body shall permit persons desiring to be heard  
75 an opportunity to present oral testimony within such  
76 reasonable time limits as are determined by the  
77 governing body. A decision regarding the special levy  
78 rate shall be made within ten days of the hearing.

79 (d) As to any special levy in effect on the first day  
80 of March, one thousand nine hundred ninety, a local  
81 levying body may reduce the rate of the special levy  
82 for all classes of property for the forthcoming tax year  
83 so as to cause such rate of special levy to produce no  
84 more than one hundred four percent of the previous  
85 year's projected property tax revenues from extending  
86 such special levy rates or such lesser reduction the  
87 local levying body considers adequate: *Provided*, That  
88 no levying body shall reduce any special levy if such  
89 levy rate has been covenanted or otherwise dedicated  
90 and is necessary to the payment of bonds or other  
91 obligations existing as of the effective date of this  
92 section: *Provided, however*, That nothing contained in  
93 this subsection shall be construed to limit the reduc-  
94 tion of the levy rate when the terms of the special levy  
95 permit a lower reduction: *Provided further*, That this  
96 provision shall not restrict the ability of a local levying  
97 body to enact excess levies as authorized under  
98 existing statutory or constitutional provisions.

99 (e) If any provision of this section is held invalid,  
100 such invalidity shall not affect other provisions or  
101 applications of this section which can be given effect  
102 without the invalid provision or its application and to  
103 this end the provisions of this section are declared to  
104 be severable.

#### **ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.**

##### **§11-12B-1. Short title; arrangement and classification.**

1 This article may be cited as the "Minimum Sever-  
2 ance Tax Act." No inference, implication or presump-  
3 tion of legislative construction shall be drawn or made  
4 by reason of the location or grouping of any particular

5 section or provision or portion of this article, and no  
6 legal effect shall be given to any descriptive matter of  
7 headings relating to any part, section, subsection or  
8 paragraph of this article.

**§11-12B-2. Definitions.**

1 (a) *General*.—When used in this article, or in the  
2 administration of this article, the terms defined in  
3 subsection (b) shall have the meanings ascribed to  
4 them by this section, unless a different meaning is  
5 clearly required by either the context in which the  
6 term is used, or by specific definition.

7 (b) Terms defined.

8 (1) “Coal” means and includes any material com-  
9 posed predominantly of hydrocarbons and carbon in a  
10 solid state and includes, but is not limited to, all  
11 materials commonly known as coal, bituminous coal,  
12 anthracite coal, lignite, brown coal, peat or jet.

13 (2) “Delegate” in the phrase “or his delegate,” when  
14 used in reference to the tax commissioner, means any  
15 officer or employee of the tax division duly authorized  
16 by the tax commissioner directly, or indirectly by one  
17 or more delegations of authority, to perform the  
18 function mentioned or described in this article or  
19 regulations promulgated thereunder.

20 (3) “Economic interest” for the purpose of this  
21 article is synonymous with the economic interest  
22 ownership required by section 611 of the Internal  
23 Revenue Code in effect on the thirty-first day of  
24 December, one thousand nine hundred eighty-five,  
25 entitling the taxpayer to a depletion deduction for  
26 income tax purposes: *Provided*, That a person who  
27 only receives an arm’s length royalty shall not be  
28 considered as having an economic interest.

29 (4) “Extraction of coal from the ground” includes  
30 extraction by mine owners or operators of coal from  
31 the waste or residue of prior mining.

32 (5) “Fiduciary” means and includes, a guardian,  
33 trustee, executor, administrator, receiver, conservator

34 or any person acting in any fiduciary capacity for any  
35 person.

36 (6) "Partnership" includes a syndicate, group, pool,  
37 joint venture, or other unincorporated organization,  
38 through or by means of which coal is severed,  
39 extracted, reduced to possession in this state, or is  
40 produced or prepared in this state, for sale, profit or  
41 commercial use. "Partner" includes a member of such  
42 a syndicate, group, pool, joint venture or organization.

43 (7) "Person" or "company" are herein used inter-  
44 changeably and include any individual, firm, partner-  
45 ship, mining partnership, joint venture, association,  
46 corporation, trust or any other group or combination  
47 acting as a unit, and the plural as well as the singular  
48 number, unless the intention to give a more limited  
49 meaning is declared by the context.

50 (8) "Production" for purposes of this article means  
51 and includes the initial severance and extraction of  
52 coal in place, from a seam within this state, or from  
53 the waste or residue of prior mining located within  
54 this state.

55 (9) "Related parties" means two or more persons,  
56 organizations or businesses owned or controlled  
57 directly or indirectly by the same interests. Control  
58 exists if a contract or lease, either written or oral, is  
59 entered into whereby one party mines or processes  
60 coal owned or held by another party and the owner or  
61 lessor participates in the severing, processing or  
62 marketing of the coal or receives any value other than  
63 an arm's length passive royalty interest.

64 (10) "Sale" includes any transfer of the ownership or  
65 title to property, whether for money or in exchange  
66 for other property or services, or any combination  
67 thereof.

68 (11) "Severing" or "severed" means the physical  
69 removal of coal from the earth or waters of this state  
70 by any means.

71 (12) "Tax commissioner" means the tax commis-  
72 sioner of the state of West Virginia, or his delegate.

73 (13) "Taxable year" means the calendar year, or the  
 74 fiscal year ending during such calendar year, upon the  
 75 basis of which tax liability is computed under this  
 76 article. "Taxable year" means, in case of a return  
 77 made for a fractional part of a year under the provi-  
 78 sions of this article, or under regulations promulgated  
 79 by the tax commissioner, the period for which such  
 80 return is made.

81 (14) "Taxpayer" means and includes any individual,  
 82 partnership, joint venture, association, corporation,  
 83 receiver, trustee, guardian, executor, administrator,  
 84 fiduciary or representative of any kind engaged in the  
 85 business of producing, severing or extracting coal in  
 86 this state for sale, profit or commercial use. In  
 87 instances where contracts (either oral or written) are  
 88 entered into whereby persons, organizations or busi-  
 89 nesses are engaged in the business of producing,  
 90 severing or extracting coal but do not obtain title to or  
 91 have an economic interest therein, the party who  
 92 owns the coal or has an economic interest therein is  
 93 the taxpayer.

94 (15) "This code" means the code of West Virginia,  
 95 one thousand nine hundred thirty-one, as amended.

96 (16) "This state" means the state of West Virginia.

97 (17) "Ton" means two thousand pounds.

**§11-12B-3. Imposition of tax, credit.**

1 (a) *Imposition of tax.*—Upon every person exercising  
 2 the privilege of engaging within this state in severing,  
 3 extracting, reducing to possession or producing coal for  
 4 sale, profit or commercial use there is hereby imposed  
 5 an annual minimum severance tax equal to fifty cents  
 6 per ton of coal produced by the taxpayer for sale,  
 7 profit or commercial use during the taxable year.

8 (b) *Credit against article thirteen-a tax.*—A person  
 9 who pays the minimum severance tax imposed by this  
 10 article shall be allowed a credit against the severance  
 11 tax imposed on coal by section three, article thirteen-  
 12 a of this chapter, but not including the additional  
 13 severance tax on coal imposed by section six of said



14 article thirteen-a, equal to the liability of the taxpayer  
15 for the taxable year for payment of the minimum  
16 severance tax on coal imposed by this article: *Pro-*  
17 *vided*, That the amount of credit allowed by this  
18 section shall not exceed the severance tax liability of  
19 the taxpayer for the taxable year determined under  
20 paragraph one, subsection (b), section three of said  
21 article thirteen-a exclusive of the additional tax on  
22 coal imposed by section six of said article thirteen-a  
23 after application of all credits to which the taxpayer  
24 may be entitled except any credit for installment  
25 payments of estimated tax paid pursuant to section six  
26 of this article during the tax year and any credit for  
27 overpayment of article thirteen-a tax.

**§11-12B-4. Accounting periods and methods of accounting.**

1 (a) *General rule.*—For purposes of the tax imposed  
2 by this article, a taxpayer's taxable year shall be the  
3 same as the taxpayer's taxable year for federal income  
4 tax purposes.

5 (b) *Change of taxable year.*—If a taxpayer's taxable  
6 year is changed for federal income tax purposes, the  
7 taxpayer's taxable year for purposes of this article  
8 shall be similarly changed. The taxpayer shall provide  
9 a copy of the authorization for such change from the  
10 Internal Revenue Service, with its annual return for  
11 the taxable year filed under this article.

12 (c) *Methods of accounting.*

13 (1) *Same as federal.*—A taxpayer's method of  
14 accounting under this article shall be the same as the  
15 taxpayer's method of accounting for federal income  
16 tax purposes. In the absence of any method of account-  
17 ing for federal income tax purposes, the accrual  
18 method of accounting shall be used unless the tax  
19 commissioner, in writing, consents to or requires use  
20 of another method.

21 (2) *Change of accounting methods.*—If a taxpayer's  
22 method of accounting is changed for federal income  
23 tax purposes, his method of accounting for purposes of  
24 this article shall similarly be changed. The taxpayer

25 shall provide a copy of the authorization for such  
26 change from the Internal Revenue Service, with its  
27 annual return for the taxable year filed under this  
28 article.

**§11-12B-5. Annual return.**

1 (a) On or before the expiration of one month after  
2 the end of the taxable year, every taxpayer subject to  
3 the tax imposed by this article shall make and file an  
4 annual return for the entire taxable year showing  
5 such information as the tax commissioner may require  
6 and computing the amount of taxes due under this  
7 article for the taxable year.

8 (b) Any taxpayer may elect to file as part of a  
9 consolidated, composite or unitary group for purposes  
10 of the tax imposed by article thirteen-a of this chapter  
11 and if such election is made, the taxpayer shall file a  
12 consolidated, composite or unitary return under this  
13 article encompassing the same consolidated, composite  
14 or unitary group unless the tax commissioner shall  
15 specifically require or approve a filing on some other  
16 basis.

**§11-12B-6. Periodic installment payments of estimated tax.**

1 (a) *General rule.*—The annual tax levied under this  
2 article shall be due and payable in periodic instal-  
3 lments as follows:

4 (1) *Tax of more than \$1,000 per month.*—For taxpay-  
5 ers whose estimated tax liability under this article  
6 exceeds one thousand dollars per month, the tax shall  
7 be due and payable in monthly installments on or  
8 before the last day of the month following the month  
9 in which the tax accrued: *Provided*, That the install-  
10 ment payment otherwise due under this subdivision  
11 on or before the thirtieth day of June each year shall  
12 be remitted to the tax commissioner on or before the  
13 fifteenth day of June each year.

14 (A) Each such taxpayer shall, on or before the last  
15 day of each month, make out an estimate of the tax for  
16 which the taxpayer is liable for the preceding month,  
17 sign the same and mail it together with a remittance,

18 in the form prescribed by the tax commissioner, of the  
19 amount of tax due to the office of the tax commis-  
20 sioner: *Provided*, That the installment payment other-  
21 wise due under this paragraph on or before the  
22 thirtieth day of June each year shall be remitted to  
23 the tax commissioner on or before the fifteenth day of  
24 June.

25 (2) *Tax of \$1,000 per month or less.*—For taxpayers  
26 whose estimated tax liability under this article is one  
27 thousand dollars per month or less, the tax shall be  
28 due and payable in quarterly installments on or before  
29 the last day of the month following the quarter in  
30 which the tax accrued:

31 (A) Each such taxpayer shall, on or before the last  
32 day of the fourth, seventh and tenth months of the  
33 taxable year, make out an estimate of the tax for  
34 which the taxpayer is liable for the preceding quarter,  
35 sign the same and mail it together with a remittance,  
36 in the form prescribed by the tax commissioner, of the  
37 amount of tax due to the office of the tax commissioner.

38 (b) *Exception.*—Notwithstanding the provisions of  
39 subsection (a) of this section, the tax commissioner, if  
40 he deems it necessary to ensure payment of the tax,  
41 may require the return and payment under this  
42 section for periods of shorter duration than those  
43 prescribed in subsection (a) of this section.

**§11-12B-7. Time and place for paying tax shown on returns.**

1 (a) *General rule.*—The person required to make the  
2 annual return required by this article shall, without  
3 assessment or notice and demand from the tax com-  
4 missioner, pay such tax at the time and place fixed for  
5 filing the return (determined without regard to any  
6 extension of time for filing the return).

7 (b) *Date fixed for payment of tax.*—The date fixed  
8 for payment of the taxes imposed by this article shall  
9 be deemed to be a reference to the last day fixed for  
10 such payment (determined without regard to any  
11 extension of time for paying the tax).

**§11-12B-8. Extension of time for filing return.**

1 The tax commissioner may, upon written request  
2 received on or prior to the due date of the annual  
3 return, or any periodic estimate, grant a reasonable  
4 extension of time for filing any return or other  
5 document required by this article upon such terms as  
6 he may by regulation prescribe, or by contract  
7 require, if good cause satisfactory to the tax commis-  
8 sioner is provided by the taxpayer.

**§11-12B-9. Extension of time for paying tax.**

1 (a) *Amount determined on return.*—The tax com-  
2 missioner may extend the time for payment of the  
3 amount of the tax shown, or required to be shown, on  
4 any return required by this article (or any periodic  
5 installment payment), for a reasonable period not to  
6 exceed six months from the date fixed for payment  
7 thereof.

8 (b) *Amount determined as deficiency.*—Under regu-  
9 lations prescribed by the tax commissioner, he may  
10 extend the time for the payment of the amount  
11 determined as a deficiency of the taxes imposed by  
12 this article for a period not to exceed eighteen months  
13 from the date fixed for payment of the deficiency. In  
14 exceptional cases, further period of time not to exceed  
15 twelve months may be granted. An extension under  
16 this subsection (b) may be granted only where it is  
17 shown to the satisfaction of the tax commissioner that  
18 payment of a deficiency upon the date fixed for the  
19 payment thereof will result in undue hardship to the  
20 taxpayer.

21 (c) *No extension for certain deficiencies.*—No exten-  
22 sion shall be granted under this section for any  
23 deficiency if the deficiency is due to negligence, to  
24 intentional disregard of rules and regulations, or to  
25 fraud with intent to evade tax.

**§11-12B-10. Place for filing returns or other documents.**

1 Tax returns, statements, or other documents, or  
2 copies thereof, required by this article or by regula-  
3 tions shall be filed with the tax commissioner by  
4 delivery, in person or by mail, to his office in Charles-

5 ton, West Virginia: *Provided*, That the tax commis-  
6 sioner may, by regulation, prescribe the place for  
7 filing such returns, statements, or other documents, or  
8 copies thereof.

**§11-12B-11. Signing of returns and other documents.**

1 (a) *General*.—Any return, statement or other docu-  
2 ment required to be made under the provisions of this  
3 article shall be signed in accordance with instructions  
4 or regulations prescribed by the tax commissioner.

5 (b) *Signing of corporation returns*.—The return of a  
6 corporation shall be signed by the president, vice  
7 president, treasurer, assistant treasurer, chief account-  
8 ing officer or any other officer duly authorized so to  
9 act. In the case of a return made for a corporation by  
10 a fiduciary, such fiduciary shall sign the return. The  
11 fact that an individual's name is signed on the return  
12 shall be prima facie evidence that such individual is  
13 authorized to sign the return on behalf of the  
14 corporation.

15 (c) *Signing of partnership returns*.—The return of a  
16 partnership shall be signed by any one of the partners.  
17 The fact that a partner's name is signed on the return  
18 shall be prima facie evidence that such partner is  
19 authorized to sign the return on behalf of the  
20 partnership.

21 (d) *Signature presumed authentic*.—The fact that an  
22 individual's name is signed to a return, statement, or  
23 other document shall be prima facie evidence for all  
24 purposes that the return, statement or other document  
25 was actually signed by him.

26 (e) *Verification of returns*.—Except as otherwise  
27 provided by the tax commissioner, any return, decla-  
28 ration or other document required to be made under  
29 this article shall contain or be verified by a written  
30 declaration that it is made under the penalties of  
31 perjury.

**§11-12B-12. Bond of taxpayer may be required.**

1 (a) Whenever it is deemed necessary to ensure

2 compliance with this article, the tax commissioner  
3 may require any taxpayer to post a cash or corporate  
4 surety bond.

5 (b) The amount of the bond shall be fixed by the tax  
6 commissioner but, except as provided in subsection (c)  
7 of this section, shall not be greater than three times  
8 the average quarterly liability of taxpayers filing  
9 returns for quarterly periods, five times the average  
10 monthly liability of taxpayers required to file returns  
11 for monthly periods, or two times the average periodic  
12 liability of taxpayers permitted or required to file  
13 returns for other than monthly or quarterly periods.

14 (c) Notwithstanding the provisions of subsection (b)  
15 of this section, no bond required under this section  
16 shall be less than five hundred dollars.

17 (d) The amount of the bond may be increased or  
18 decreased by the tax commissioner at any time subject  
19 to the limitations provided in this section. The tax  
20 commissioner may bring an action for a restraining  
21 order or a temporary or permanent injunction to  
22 restrain or enjoin the operation of a taxpayer's  
23 business until the bond is posted and any delinquent  
24 tax, including applicable interest and additions to tax  
25 has been paid. Such action may be brought in the  
26 circuit court of Kanawha County or in the circuit  
27 court of any county having jurisdiction over the  
28 taxpayer.

**§11-12B-13. Collection of tax; tax commissioner may require  
first purchaser to withhold tax of delinquent  
taxpayer.**

1 Whenever the tax commissioner determines that a  
2 taxpayer is delinquent in payment of the tax imposed  
3 by this article and that collection of the tax imposed by  
4 this article will be facilitated or expedited, the tax  
5 commissioner may require the first person who  
6 purchases the coal which is the measure of tax under  
7 this article from the taxpayer to withhold the tax due  
8 under this article from the purchase price as agent for  
9 the state and remit it to the tax commissioner as  
10 provided in sections seven and eight of this article.

**§11-12B-14. Records.**

1 (a) Every taxpayer liable for reporting or paying tax  
2 under this article shall keep such records, receipts,  
3 invoices and other pertinent papers in such form as  
4 the tax commissioner may require.

5 (b) Every taxpayer shall keep such records for not  
6 less than three years after the annual return is filed  
7 under this article, unless the tax commissioner in  
8 writing authorizes their earlier destruction. An exten-  
9 sion of time for making an assessment shall automat-  
10 ically extend the time period for keeping the records  
11 for all years subject to audit covered in the agreement  
12 for extension of time.

**§11-12B-15. General procedure and administration.**

1 Each and every provision of the "West Virginia Tax  
2 Procedure and Administration Act" set forth in article  
3 ten of this chapter, shall apply to the tax imposed by  
4 this article with like effect if said act were applicable  
5 only to the tax imposed by this article and were set  
6 forth in extenso in this article.

**§11-12B-16. Criminal penalties.**

1 Each and every provision of the "West Virginia Tax  
2 Crimes and Penalties Act" set forth in article nine of  
3 this chapter shall apply to the tax imposed by this  
4 article with like effect as if said act were applicable  
5 only to the tax imposed by this article and were set  
6 forth in extenso in this article.

**§11-12B-17. Severability.**

1 If any provision of this article or the application  
2 thereof shall for any reason be adjudged by any court  
3 of competent jurisdiction to be invalid, such judgment  
4 shall not affect, impair or invalidate the remainder of  
5 said article, but shall be confined in its operation to  
6 the provision thereof directly involved in the contro-  
7 versy in which such judgment shall have been ren-  
8 dered, and the applicability of such provision to other  
9 persons or circumstances shall not be affected thereby.

**§11-12B-18. Effective date; and compliance.**

1 (a) *Effective date.*—The tax imposed by this article  
 2 shall take effect on the first day of October, one  
 3 thousand nine hundred ninety, apply to coal sold or  
 4 delivered for sale, profit or commercial use on or after  
 5 that date.

6 (b) *Compliance.*—To facilitate ease of administration  
 7 and ease of compliance by taxpayers, the tax commis-  
 8 sioner may require persons subject to the tax imposed  
 9 by this article and persons subject to the tax imposed  
 10 by article thirteen-a of this chapter to file combined  
 11 returns or declarations of estimated tax for both taxes  
 12 and to make combined payments of such taxes.

#### ARTICLE 13. BUSINESS AND OCCUPATION TAX.

##### §11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

1 (a) *Rate of tax.*—Upon every person engaging or  
 2 continuing within this state in the business of gener-  
 3 ating or producing electricity for sale, profit or  
 4 commercial use, either directly or indirectly through  
 5 the activity of others, in whole or in part, or in the  
 6 business of selling electricity to consumers, or in both  
 7 businesses, the tax imposed by section two of this  
 8 article shall be equal to:

9 (1) Twenty-six hundredths of one cent times the  
 10 kilowatt hours of net generation available for sale that  
 11 was generated or produced in this state by the tax-  
 12 payer during the taxable year, except that this rate  
 13 shall be five hundredths of one cent times the kilowatt  
 14 hours of net generation available for sale that was  
 15 generated or produced in this state by the taxpayer  
 16 and sold to a plant location of a customer engaged in  
 17 manufacturing activity if the contract demand at such  
 18 plant location exceeds two hundred thousand kilowatts  
 19 per hour per year or if the usage at such plant location  
 20 exceeds two hundred thousand kilowatts per hour in a  
 21 year: *Provided*, That in order to encourage the devel-  
 22 opment of industry to improve the environment of  
 23 this state, the tax imposed by this section on any  
 24 person generating or producing electric power and an  
 25 alternative form of energy at a facility located within



26 this state substantially from gob or other mine refuse  
27 shall be equal to five hundredths of one cent times the  
28 kilowatt hours of net generation or production avail-  
29 able for sale. The measure of tax under this paragraph  
30 shall be equal to the total kilowatt hours of net  
31 generation available for sale that was generated or  
32 produced in this state by the taxpayer during the  
33 taxable year, regardless of the place of sale or use, or  
34 the fact that transmission may be made to points  
35 outside this state.

36 (2) Nineteen-hundredth of one cent times the kilo-  
37 watt hours of electricity sold to consumers in this state  
38 that were not generated or produced in this state by  
39 the taxpayer, except that the rate shall be five hun-  
40 dredths of one cent times the kilowatt hours of  
41 electricity not generated or produced in this state by  
42 the taxpayer which is sold to a plant location in this  
43 state of a customer engaged in manufacturing activity  
44 if the contract demand at such plant location exceeds  
45 two hundred thousand kilowatts per hour per year or  
46 if the usage at such plant location exceeds two hun-  
47 dred thousand kilowatts per hour in a year. The  
48 measure of tax under this paragraph shall be equal to  
49 the total kilowatt hours of electricity sold to consumers  
50 in this state during the taxable year, that were not  
51 generated or produced in this state by the taxpayer, to  
52 be determined by subtracting from the total kilowatt  
53 hours of electricity sold to consumers in the state the  
54 net kilowatt hours of electricity generated or produced  
55 in the state by the taxpayer during the taxable year.

56 The West Virginia public service commission shall,  
57 upon application of a public utility, allow an immedi-  
58 ate pass-through to the utility's customers in this state  
59 in the form of a rate surcharge the increase enacted  
60 by the Legislature during its third extraordinary  
61 session, one thousand nine hundred ninety, in the tax  
62 imposed by this article upon electricity generated or  
63 produced in this state and sold to consumers in this  
64 state and upon electricity not generated or produced in  
65 this state that is sold to consumers in this state.

66 (b) *Exemptions.*—The provisions of this section shall

67 not apply to:

68 (1) Kilowatt hours of electricity generated and sold,  
69 or purchased and resold, by a municipally owned  
70 plant.

71 (2) Kilowatt hours of electric power that are separ-  
72 ately metered and consumed in an electrolytic process  
73 for the manufacture of chlorine.

74 (3) Kilowatt hours of electric power that are separ-  
75 ately metered and consumed in the manufacture of  
76 ferroalloy. As used in this paragraph, the term "fer-  
77 roalloy" means any of the various alloys of iron and  
78 one or more other elements used as a raw material in  
79 the production of steel but shall not include electric  
80 power used in the production of steel.

81 (4) The full economic benefits provided to the  
82 taxpayer by paragraphs (2) and (3) of this subsection  
83 shall be passed on to the manufacturer of the chlorine  
84 or ferroalloy.

85 (c) *Credit*.—Any person taxable under paragraph (2),  
86 subsection (a) of this section shall be allowed a credit  
87 against the amount of tax due under that paragraph  
88 for any electric power generation taxes paid by the  
89 taxpayer with respect to such electric power to the  
90 state in which such power was generated or produced.  
91 The amount of credit allowed shall not exceed the tax  
92 liability arising under paragraph (2), subsection (a) of  
93 this section with respect to the sale of such power.

94 (d) *Transition rule*.—Beginning the first day of  
95 March, one thousand nine hundred eighty-nine, elec-  
96 tric light and power companies shall determine their  
97 liability for payment of tax under this section and  
98 sections two-d and two-m of this article. If for taxable  
99 months beginning on or after the first day of March,  
100 one thousand nine hundred eighty-nine, liability for  
101 tax under section two-n of this article is equal to or  
102 greater than the sum of the power company's liability  
103 for payment of tax under paragraph (3), subsection (a),  
104 section two-d and section two-m of this article, then  
105 the company shall pay the tax due under section two-

106 n of this article and not the tax due under paragraph  
107 (3), subsection (a) of section two-d and section two-m  
108 of this article. If tax liability under section two-n is  
109 less, then tax shall be paid under paragraph (3),  
110 subsection (a), section two-d and section two-m of this  
111 article and the tax due under section two-n shall not  
112 be paid. The provisions of this subsection (d) shall  
113 expire and become null and void for taxable years  
114 beginning on or after the first day of January, one  
115 thousand nine hundred ninety-eight.

116 (e) *Effective date.*—The amendments to this section  
117 made in the year one thousand nine hundred ninety  
118 shall take effect on the first day of October, one  
119 thousand nine hundred ninety: *Provided*, That as to  
120 calendar months ending before such date, the tax rates  
121 specified in this section, as then in effect shall be fully  
122 and completely preserved.

#### ARTICLE 15. CONSUMERS SALES TAX.

##### **§11-15-8c. Transition rules for elimination of exemption for materials and supplies incorporated in real property owned by governmental entities.**

1 (a) *General rule.*—The expired provisions in subsec-  
2 tion (j), section nine of this article, which previously  
3 exempted sales of tangible personal property to per-  
4 sons engaging in the activity of contracting, pursuant  
5 to a written contract with the United States, this state,  
6 or with a political subdivision thereof, or with a public  
7 corporation created by the Legislature or by another  
8 governmental entity pursuant to an act of the Legisla-  
9 ture, for a building or structure, or improvement  
10 thereto, or other improvement to real property that is  
11 or will be owned and used by the governmental entity  
12 for a governmental or proprietary purpose, shall  
13 continue in force for:

14 (1) Tangible personal property purchased by a  
15 contractor on or after the first day of October, one  
16 thousand nine hundred ninety, in fulfillment of a  
17 written contract for contracting, as defined in section  
18 two of this article, that was executed and legally  
19 binding on the parties thereto on or before the

20 fifteenth day of September, one thousand nine hun-  
 21 dred ninety; or in fulfillment of a written contract  
 22 entered into after said fifteenth day of September  
 23 pursuant to a written bid for contracting that was  
 24 made on or before said fifteenth day of September  
 25 that was binding on the contractor, but only to the  
 26 extent that the bid is subsequently incorporated into a  
 27 written contract; and

28 (2) Tangible personal property purchased by a  
 29 contractor on or after the first day of October, one  
 30 thousand nine hundred ninety, for consumption or use  
 31 in fulfillment of a written contract for the construction  
 32 of a new improvement to real property, the construc-  
 33 tion or operation of which was approved by a federal  
 34 or state regulatory body prior to the fifteenth day of  
 35 September, one thousand nine hundred ninety, or  
 36 pursuant to a federal grant awarded prior to said  
 37 fifteenth day of September.

38 (b) *Renewals and extensions.*—A renewal of any  
 39 contract shall constitute a new contract for purposes of  
 40 this section, and the date of entry into a contract  
 41 renewal by the parties, the date or dates of tender of  
 42 consideration and the time of performance of any  
 43 contractual obligations under a renewed contract shall  
 44 be treated as the dates for determining application of  
 45 this section to the renewed contract. Extensions of  
 46 time granted or agreed upon by the parties to a  
 47 contract for performance of the contract or for tender  
 48 of consideration under the contract shall not be  
 49 treated as contract renewals. Contracts to which such  
 50 extensions apply shall be treated under these transi-  
 51 tion rules as if the original contractual provisions for  
 52 performance and tender of consideration remain in  
 53 effect. For purposes of this section, the terms “con-  
 54 tract” or “contracts”, and “contract renewal” or  
 55 “renewal” shall have the same meaning as defined in  
 56 subsection (d), section eight-a of this article.

**§11-15-8d. Limitations on right to assert exemptions.**

1 Persons who perform “contracting” as defined in  
 2 section two of this article, or persons acting in an

3 agency capacity, may not assert any exemption to  
4 which the purchaser of such contracting services or  
5 the principal is entitled. Any statutory exemption to  
6 which a taxpayer may be entitled shall be invalid  
7 unless the tangible personal property or taxable  
8 service is actually purchased by such taxpayer and is  
9 directly invoiced to and paid by such taxpayer: *Pro-*  
10 *vided*, That this section shall not apply to purchases by  
11 an employee for his or her employer; purchases by a  
12 partner for his or her partnership; or purchases by a  
13 duly authorized officer of a corporation, or unincor-  
14 porated organization, for his or her corporation or  
15 unincorporated organization, so long as the purchase is  
16 invoiced to and paid by such employer, partnership,  
17 corporation or unincorporated organization.

18 *Transition rule.*—This section shall not apply to  
19 purchases of tangible personal property or taxable  
20 services in fulfillment of a purchasing agent or  
21 procurement agent contract executed and legally  
22 binding on the parties thereto prior to the fifteenth  
23 day of September, one thousand nine hundred ninety:  
24 *Provided*, That this transition rule shall not apply to  
25 any purchases of tangible personal property or taxable  
26 services made under such a contract after the thirty-  
27 first day of August, one thousand nine hundred  
28 ninety-one; and this transition rule shall not apply if  
29 the primary purpose of the purchasing agent or  
30 procurement agent contract was to avoid payment of  
31 consumers sales and use taxes.

**§11-15-9. Exemptions.**

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to  
3 consumers through mains or pipes, and sales of  
4 electricity;

5 (b) Sales of textbooks required to be used in any of  
6 the schools of this state or in any institution in this  
7 state which qualifies as a nonprofit or educational  
8 institution subject to the West Virginia department of  
9 education and the arts; board of trustees of the  
10 university system of West Virginia, or the board of

11 directors for colleges located in this state;

12 (c) Sales of property or services to the state, its  
13 institutions or subdivisions, governmental units,  
14 institutions or subdivision of other states: *Provided*,  
15 That the law of such other state provides the same  
16 exemption to governmental units or subdivisions of  
17 this state and to the United States, including agencies  
18 of federal, state or local governments for distribution  
19 in public welfare or relief work;

20 (d) Sales of vehicles which are titled by the division  
21 of motor vehicles and which are subject to the tax  
22 imposed by section four, article three, chapter  
23 seventeen-a of this code, or like tax;

24 (e) Sales of property or services to churches and  
25 bona fide charitable organizations who make no  
26 charge whatsoever for the services they render:  
27 *Provided*, That the exemption herein granted shall  
28 apply only to services, equipment, supplies, food for  
29 meals and materials directly used or consumed by  
30 these organizations, and shall not apply to purchases of  
31 gasoline or special fuel;

32 (f) Sales of tangible personal property or services to  
33 a corporation or organization which has a current  
34 registration certificate issued under article twelve of  
35 this chapter, is exempt from federal income taxes  
36 under section 501(c)(3) or (c)(4) of the Internal Reve-  
37 nue Code of one thousand nine hundred eighty-six, as  
38 amended, and is:

39 (1) A church or a convention or association of  
40 churches as defined in section 170 of the Internal  
41 Revenue Code of one thousand nine hundred eighty-  
42 six, as amended;

43 (2) An elementary or secondary school which main-  
44 tains a regular faculty and curriculum and has a  
45 regularly enrolled body of pupils or students in  
46 attendance at the place in this state where its educa-  
47 tional activities are regularly carried on;

48 (3) A corporation or organization which annually  
49 receives more than one half of its support from any

50 combination of gifts, grants, direct or indirect charita-  
51 ble contributions, or membership fees;

52 (4) An organization which has no paid employees  
53 and its gross income from fund raisers, less reasonable  
54 and necessary expenses incurred to raise such gross  
55 income (or the tangible personal property or services  
56 purchased with such net income), is donated to an  
57 organization which is exempt from income taxes  
58 under section 501(c)(3) or (c)(4) of the Internal Reve-  
59 nue Code of one thousand nine hundred eighty-six, as  
60 amended; or

61 (5) A youth organization, such as the Girl Scouts of  
62 the United States of America, the Boy Scouts of  
63 America, or the YMCA Indian Guide/Princess Pro-  
64 gram, and the local affiliates thereof, which is organ-  
65 ized and operated exclusively for charitable purposes  
66 and has as its primary purpose the nonsectarian  
67 character development and citizenship training of its  
68 members.

69 (6) For purposes of this subsection:

70 (A) The term "support" includes, but is not limited  
71 to:

72 (i) Gifts, grants, contributions or membership fees;

73 (ii) Gross receipts from fund raisers which include  
74 receipts from admissions, sales of merchandise, perfor-  
75 mance of services or furnishing of facilities in any  
76 activity which is not an unrelated trade or business  
77 within the meaning of section 513 of the Internal  
78 Revenue Code of one thousand nine hundred eighty-  
79 six, as amended;

80 (iii) Net income from unrelated business activities,  
81 whether or not such activities are carried on regularly  
82 as a trade or business;

83 (iv) Gross investment income as defined in section  
84 509(e) of the Internal Revenue Code of one thousand  
85 nine hundred eighty-six, as amended;

86 (v) Tax revenues levied for the benefit of a corpora-  
87 tion or organization either paid to or expended on

88 behalf of such organization; and

89 (vi) The value of services or facilities (exclusive of  
90 services or facilities generally furnished to the public  
91 without charge) furnished by a governmental unit  
92 referred to in section 170(c)(1) of the Internal Revenue  
93 Code of one thousand nine hundred eighty-six, as  
94 amended, to an organization without charge. This  
95 term does not include any gain from the sale or other  
96 disposition of property which would be considered as  
97 gain from the sale or exchange of a capital asset, or the  
98 value of an exemption from any federal, state or local  
99 tax or any similar benefit;

100 (B) The term "charitable contribution" means a  
101 contribution or gift to or for the use of a corporation  
102 or organization, described in section 170(c)(2) of the  
103 Internal Revenue Code of one thousand nine hundred  
104 eighty-six, as amended;

105 (C) The term "membership fee" does not include  
106 any amounts paid for tangible personal property or  
107 specific services rendered to members by the corpora-  
108 tion or organization;

109 (7) The exemption allowed by this subsection (f) does  
110 not apply to sales of gasoline or special fuel or to sales  
111 of tangible personal property or services to be used or  
112 consumed in the generation of unrelated business  
113 income as defined in section 513 of the Internal  
114 Revenue Code of one thousand nine hundred eighty-  
115 six, as amended. The provisions of this subsection as  
116 amended by this act shall apply to sales made after the  
117 thirtieth day of June, one thousand nine hundred  
118 eighty-nine: *Provided*, That the exemption herein  
119 granted shall apply only to services, equipment,  
120 supplies and materials used or consumed in the  
121 activities for which such organizations qualify as tax  
122 exempt organizations under the Internal Revenue  
123 Code by these organizations and shall not apply to  
124 purchases of gasoline or special fuel;

125 (g) Sales of property or services to persons engaged  
126 in this state in the business of manufacturing, trans-  
127 portation, transmission, communication or in the



128 production of natural resources: *Provided*, That the  
129 exemption herein granted shall apply only to services,  
130 machinery, supplies and materials directly used or  
131 consumed in the businesses or organizations named  
132 above, and shall not apply to purchases of gasoline or  
133 special fuel: *Provided, however*, That on and after the  
134 first day of July, one thousand nine hundred eighty-  
135 seven, the exemption provided in this subsection shall  
136 apply only to services, machinery, supplies and mate-  
137 rials directly used or consumed in the activities of  
138 manufacturing, transportation, transmission, commu-  
139 nication or the production of natural resources in the  
140 businesses or organizations named above and shall not  
141 apply to purchases of gasoline or special fuel;

142 (h) An isolated transaction in which any taxable  
143 service or any tangible personal property is sold,  
144 transferred, offered for sale or delivered by the owner  
145 thereof or by his representative for the owner's  
146 account, such sale, transfer, offer for sale or delivery  
147 not being made in the ordinary course of repeated and  
148 successive transactions of like character by such owner  
149 or on his account by such representative: *Provided*,  
150 That nothing contained herein may be construed to  
151 prevent an owner who sells, transfers or offers for sale  
152 tangible personal property in an isolated transaction  
153 through an auctioneer from availing himself or herself  
154 of the exemption provided herein, regardless where  
155 such isolated sale takes place. The tax commissioner  
156 may adopt such legislative rule pursuant to chapter  
157 twenty-nine-a of this code as he deems necessary for  
158 the efficient administration of this exemption;

159 (i) Sales of tangible personal property or of any  
160 taxable services rendered for use or consumption in  
161 connection with the commercial production of an  
162 agricultural product the ultimate sale of which will be  
163 subject to the tax imposed by this article or which  
164 would have been subject to tax under this article:  
165 *Provided*, That sales of tangible personal property and  
166 services to be used or consumed in the construction of  
167 or permanent improvement to real property and sales  
168 of gasoline and special fuel shall not be exempt;

169 (j) Sales of tangible personal property to a person for  
170 the purpose of resale in the form of tangible personal  
171 property: *Provided*, That sales of gasoline and special  
172 fuel by distributors and importers shall be taxable  
173 except when the sale is to another distributor for  
174 resale: *Provided, however*, That sales of building  
175 materials or building supplies or other property to any  
176 person engaging in the activity of contracting, as  
177 defined in this article, which is to be installed in,  
178 affixed to or incorporated by such person or his agent  
179 into any real property, building or structure shall not  
180 be exempt under this subsection, except that sales of  
181 tangible personal property to a person engaging in the  
182 activity of contracting pursuant to a written contract  
183 with the United States, this state, or with a political  
184 subdivision thereof, or with a public corporation  
185 created by the Legislature or by another government  
186 entity pursuant to an act of the Legislature, for a  
187 building or structure, or improvement thereto, or  
188 other improvement to real property that is or will be  
189 owned and used by the governmental entity for a  
190 governmental or proprietary purpose, who incorpo-  
191 rates such property in such building, structure or  
192 improvement shall, with respect to such tangible  
193 personal property, nevertheless be deemed to be the  
194 vendor of such property to the governmental entity  
195 and any person seeking to qualify for and assert this  
196 exception must do so pursuant to such legislative rules  
197 and regulations as the tax commissioner may promul-  
198 gate and upon such forms as the tax commissioner  
199 may prescribe. A subcontractor who, pursuant to a  
200 written subcontract with a prime contractor who  
201 qualifies for this exception, provides equipment, or  
202 materials, and labor to such a prime contractor shall  
203 be treated in the same manner as the prime contractor  
204 is treated with respect to the prime contract under  
205 this exception and the legislative rules and regulations  
206 promulgated by the tax commissioner: *Provided*  
207 *further*, That the exemption for government contrac-  
208 tors in the preceding proviso shall expire on the first  
209 day of October, one thousand nine hundred ninety,  
210 subject to the transition rules set forth in section

211 eight-c of this article;

212 (k) Sales of property or services to nationally  
213 chartered fraternal or social organizations for the sole  
214 purpose of free distribution in public welfare or relief  
215 work: *Provided*, That sales of gasoline and special fuel  
216 shall be taxable;

217 (l) Sales and services, fire fighting or station house  
218 equipment, including construction and automotive,  
219 made to any volunteer fire department organized and  
220 incorporated under the laws of the state of West  
221 Virginia: *Provided*, That sales of gasoline and special  
222 fuel shall be taxable;

223 (m) Sales of newspapers when delivered to consu-  
224 mers by route carriers;

225 (n) Sales of drugs dispensed upon prescription and  
226 sales of insulin to consumers for medical purposes;

227 (o) Sales of radio and television broadcasting time,  
228 preprinted advertising circulars and newspaper and  
229 outdoor advertising space for the advertisement of  
230 goods or services;

231 (p) Sales and services performed by day-care centers;

232 (q) Casual and occasional sales of property or  
233 services not conducted in a repeated manner or in the  
234 ordinary course of repetitive and successive transac-  
235 tions of like character by a corporation or organization  
236 which is exempt from tax under subsection (f) of this  
237 section on its purchases of tangible personal property  
238 or services:

239 (1) For purposes of this subsection, the term "casual  
240 and occasional sales not conducted in repeated manner  
241 or in the ordinary course of repetitive and successive  
242 transactions of like character" means sales of tangible  
243 personal property or services at fund raisers sponsored  
244 by a corporation or organization which is exempt,  
245 under subsection (f) of this section, from payment of  
246 the tax imposed by this article on its purchases, when  
247 such fund raisers are of limited duration and are held  
248 no more than six times during any twelve-month

249 period and limited duration means no more than  
250 eighty-four consecutive hours;

251 (2) The provisions of this subsection (q), as amended  
252 by this act, shall apply to sales made after the thirtieth  
253 day of June, one thousand nine hundred eighty-nine;

254 (r) Sales of property or services to a school which  
255 has approval from the board of trustees of the univer-  
256 sity system of West Virginia or the board of directors  
257 of the state college system to award degrees, which has  
258 its principal campus in this state, and which is exempt  
259 from federal and state income taxes under section  
260 501(c)(3) of the Internal Revenue Code of one thousand  
261 nine hundred eighty-six, as amended: *Provided*, That  
262 sales of gasoline and special fuel shall be taxable;

263 (s) Sales of mobile homes to be utilized by purchas-  
264 ers as their principal year-round residence and dwell-  
265 ing: *Provided*, That these mobile homes shall be  
266 subject to tax at the three-percent rate;

267 (t) Sales of lottery tickets and materials by licensed  
268 lottery sales agents and lottery retailers authorized by  
269 the state lottery commission, under the provisions of  
270 article twenty-two, chapter twenty-nine of this code;

271 (u) Leases of motor vehicles titled pursuant to the  
272 provisions of article three, chapter seventeen-a of this  
273 code to lessees for a period of thirty or more consec-  
274 utive days. This exemption shall apply to leases  
275 executed on or after the first day of July, one thou-  
276 sand nine hundred eighty-seven, and to payments  
277 under long-term leases executed before such date, for  
278 months thereof beginning on or after such date;

279 (v) Notwithstanding the provisions of subsection (g)  
280 of this section or any provisions of this article to the  
281 contrary, sales of property and services to persons  
282 subject to tax under article thirteen, thirteen-a or  
283 thirteen-b of this chapter: *Provided*, That the exemp-  
284 tion herein granted shall apply both to property or  
285 services directly or not directly used or consumed in  
286 the conduct of privileges which are subject to tax  
287 under such articles but shall not apply to purchases of

288 gasoline or special fuel;

289 (w) Sales of propane to consumers for poultry house  
290 heating purposes, with any seller to such consumer  
291 who may have prior paid such tax in his price, to not  
292 pass on the same to the consumer, but to make  
293 application and receive refund of such tax from the  
294 tax commissioner, pursuant to rules and regulations  
295 which shall be promulgated by the tax commissioner;  
296 and notwithstanding the provisions of section eighteen  
297 of this article or any other provisions of such article to  
298 the contrary;

299 (x) Any sales of tangible personal property or  
300 services purchased after the thirtieth day of Septem-  
301 ber, one thousand nine hundred eighty-seven, and  
302 lawfully paid for with food stamps pursuant to the  
303 federal food stamp program codified in 7 United States  
304 Code, §2011, et seq., as amended, or with drafts issued  
305 through the West Virginia special supplemental food  
306 program for women, infants and children codified in  
307 42 United States Code, §1786;

308 (y) Sales of tickets for activities sponsored by  
309 elementary and secondary schools located within this  
310 state;

311 (z) Sales of electronic data processing services and  
312 related software: *Provided*, That for the purposes of  
313 this subsection (z) "electronic data processing servi-  
314 ces" means (1) the processing of another's data,  
315 including all processes incident to processing of data  
316 such as keypunching, keystroke verification, rearrang-  
317 ing or sorting of previously documented data for the  
318 purpose of data entry or automatic processing, and  
319 changing the medium on which data is sorted,  
320 whether these processes are done by the same person  
321 or several persons; and (2) providing access to com-  
322 puter equipment for the purpose of processing data or  
323 examining or acquiring data stored in or accessible to  
324 such computer equipment;

325 (aa) Tuition charged for attending educational  
326 summer camps;

327 (bb) Sales of building materials or building supplies  
328 or other property to an organization qualified under  
329 section 501 (c)(3) or (c)(4) of the Internal Revenue  
330 Code of one thousand nine hundred eighty-six, as  
331 amended, which are to be installed in, affixed to or  
332 incorporated by such organization or its agent into real  
333 property, or into a building or structure which is or  
334 will be used as permanent low-income housing, tran-  
335 sitional housing, emergency homeless shelter, domes-  
336 tic violence shelter or emergency children and youth  
337 shelter if such shelter is owned, managed, developed  
338 or operated by an organization qualified under section  
339 501(c)(3) or (c)(4) of the Internal Revenue Code of one  
340 thousand nine hundred eighty-six, as amended;

341 (cc) Dispensing of services performed by one corpo-  
342 ration for another corporation when both corporations  
343 are members of the same controlled group. Control  
344 means ownership, directly or indirectly, of stock  
345 possessing fifty percent or more of the total combined  
346 voting power of all classes of the stock of a corporation  
347 entitled to vote or ownership, directly or indirectly, of  
348 stock possessing fifty percent or more of the value of  
349 the corporation;

350 (dd) Food for the following shall be exempt:

351 (1) Food purchased or sold by public or private  
352 schools, school sponsored student organizations, or  
353 school sponsored parent-teacher associations to stu-  
354 dents enrolled in such school or to employees of such  
355 school during normal school hours; but not those sales  
356 of food made to the general public;

357 (2) Food purchased or sold by a public or private  
358 college or university or by a student organization  
359 officially recognized by such college or university to  
360 students enrolled at such college or university when  
361 such sales are made on a contract basis so that a fixed  
362 price is paid for consumption of food products for a  
363 specific period of time without respect to the amount  
364 of food product actually consumed by the particular  
365 individual contracting for the sale and no money is  
366 paid at the time the food product is served or

367 consumed;

368 (3) Food purchased or sold by a charitable or private  
369 nonprofit organization, a nonprofit organization or a  
370 governmental agency under a program to provide food  
371 to low-income persons at or below cost;

372 (4) Food sold in an occasional sale by a charitable or  
373 nonprofit organization including volunteer fire depart-  
374 ments and rescue squads, if the purpose of the sale is  
375 to obtain revenue for the functions and activities of  
376 the organization and the revenue so obtained is  
377 actually expended for that purpose;

378 (5) Food sold by any religious organization at a social  
379 or other gathering conducted by it or under its  
380 auspices, if the purpose in selling the food is to obtain  
381 revenue for the functions and activities of the organi-  
382 zation and the revenue obtained from selling the food  
383 is actually used in carrying on such functions and  
384 activities: *Provided*, That purchases made by such  
385 organizations shall not be exempt as a purchase for  
386 resale;

387 (ee) Sales of food by little leagues, midget football  
388 leagues, youth football or soccer leagues and similar  
389 types of organizations, including scouting groups and  
390 church youth groups, if the purpose in selling the food  
391 is to obtain revenue for the functions and activities of  
392 the organization and the revenues obtained from  
393 selling the food is actually used in supporting or  
394 carrying on functions and activities of the groups:  
395 *Provided*, That such purchases made by such organi-  
396 zations shall not be exempt as a purchase for resale;

397 (ff) Charges for room and meals by fraternities and  
398 sororities to their members: *Provided*, That such  
399 purchases made by a fraternity or sorority shall not be  
400 exempt as a purchase for resale;

401 (gg) Sales of or charges for the transportation of  
402 passengers in interstate commerce;

403 (hh) Sales of tangible personal property or services  
404 to any person which this state is prohibited from  
405 taxing under the laws of the United States or under  
406 the constitution of this state;

407 (ii) Sales of tangible personal property or services to  
 408 any person who claims exemption from the tax  
 409 imposed by this article or article fifteen-a of this  
 410 chapter pursuant to the provisions of any other  
 411 chapter of this code;

412 (jj) Charges for the services of opening and closing  
 413 a burial lot;

414 (kk) Sales of livestock, poultry or other farm pro-  
 415 ducts in their original state by the producer thereof  
 416 (or a member of the producer's immediate family)  
 417 who is not otherwise engaged in making retail sales of  
 418 tangible personal property; and sales of livestock sold  
 419 at public sales sponsored by breeder's or registry  
 420 associations or livestock auction markets: *Provided*,  
 421 That the exemptions allowed by this subsection shall  
 422 apply to sales made on or after the first day of July,  
 423 one thousand nine hundred ninety, and may be  
 424 claimed without presenting or obtaining exemption  
 425 certificates: *Provided, however*, That the farmer shall  
 426 maintain adequate records;

427 (ll) Sales of motion picture films to motion picture  
 428 exhibitors for exhibition if the sale of tickets or the  
 429 charge for admission to the exhibition of the film is  
 430 subject to the tax imposed by this article and sales of  
 431 coin-operated video arcade machines, or video arcade  
 432 games, to a person engaged in the business of provid-  
 433 ing such machines to the public for a charge upon  
 434 which the tax imposed by this article is remitted to the  
 435 tax commissioner: *Provided*, That the exemption  
 436 provided in this subsection shall apply to sales made  
 437 on or after the first day of July, one thousand nine  
 438 hundred ninety, and may be claimed by presenting to  
 439 the seller a properly executed exemption certificate;  
 440 and

441 (mm) Sales of aircraft repair, remodeling and  
 442 maintenance services when such services are to an  
 443 aircraft operated by a certificated or licensed carrier of  
 444 persons or property, or by a governmental entity, or to  
 445 an engine or other component part of an aircraft  
 446 operated by a certificated or licensed carrier of



447 persons or property, or by a governmental entity and  
448 sales of tangible personal property that is permanently  
449 affixed or permanently attached as a component part  
450 of an aircraft owned or operated by a certificated or  
451 licensed carrier of persons or property, or by a  
452 governmental entity, as part of the repair, remodeling  
453 or maintenance service and sales of machinery, tools,  
454 or equipment, directly used or consumed exclusively  
455 in the repair, remodeling, or maintenance of aircraft,  
456 aircraft engines, or aircraft component parts, for a  
457 certificated or licensed carrier of persons or property,  
458 or for a governmental entity.

**§11-15-16. Tax return and payment; exception.**

1 (a) Subject to the exceptions set forth in subsection  
2 (b) of this section, the taxes levied by this article shall  
3 be due and payable in monthly installments, on or  
4 before the fifteenth day of the month next succeeding  
5 the month in which the tax accrued. The taxpayer  
6 shall, on or before the fifteenth day of each month,  
7 make out and mail to the tax commissioner a return  
8 for the preceding month, in the form prescribed by  
9 the tax commissioner, showing: (a) The total gross  
10 proceeds of his business for that month; (b) the gross  
11 proceeds of his business upon which the tax is based;  
12 (c) the amount of the tax for which he is liable; and  
13 (d) any further information necessary in the computa-  
14 tion and collection of the tax which the tax commis-  
15 sioner may require. A remittance for the amount of  
16 the tax shall accompany the return: *Provided*, That  
17 notwithstanding the provisions of section thirty of this  
18 article, any such tax collected by the alcohol beverage  
19 control commissioner from persons or organizations  
20 licensed under authority of article seven, chapter sixty  
21 of this code shall be paid into a revolving fund account  
22 in the state treasury, designated the drunk driving  
23 prevention fund, to be administered by the commis-  
24 sion on drunk driving prevention, subject to appropri-  
25 ations by the Legislature: *Provided, however*, That any  
26 balances in the drunk driving prevention fund on the  
27 first day of July, one thousand nine hundred eighty-  
28 nine, and all moneys received into such fund during

29 the fiscal year commencing the first day of July, one  
30 thousand nine hundred eighty-nine, may, up to a  
31 maximum of seven hundred fifty thousand dollars, be  
32 used by the department of public safety for personal  
33 services, employee benefits and unclassified expendi-  
34 tures for the time period commencing the first day of  
35 July, one thousand nine hundred eighty-nine, and  
36 ending the last day of June, one thousand nine  
37 hundred ninety, subject to appropriation by the  
38 Legislature. A monthly return shall be signed by the  
39 taxpayer or his duly authorized agent.

40 (b) *Accelerated payment.*—(1) For calendar years  
41 beginning after the thirty-first day of December, one  
42 thousand nine hundred ninety, taxpayers whose  
43 average monthly installment for the previous calendar  
44 year exceeds one hundred thousand dollars, shall  
45 remit the tax attributable to the first fifteen days of  
46 June each year on or before the twenty-third day of  
47 said month of June.

48 (2) For purposes of complying with paragraph one of  
49 this subsection-b, the taxpayer shall remit an amount  
50 equal to the amount of tax imposed by this article on  
51 actual taxable sales of tangible personal property and  
52 sales of taxable services during the first fifteen days of  
53 June or, at the taxpayer's election, taxpayer may  
54 remit an amount equal to fifty percent of taxpayer's  
55 liability for tax under this article on taxable sales of  
56 tangible personal property and sales of taxable services  
57 made during the preceding month of May.

58 (3) For a business which has not been in existence  
59 for a full calendar year, the total tax due from the  
60 business during such prior calendar year shall be  
61 divided by the number of months, including fractions  
62 of a month, that it was in business during such prior  
63 calendar year; and if that amount exceeds one hun-  
64 dred thousand dollars, the tax attributable to the first  
65 fifteen days of June each year shall be remitted on or  
66 before the twenty-third day of said month of June as  
67 provided in paragraph two of this subsection (b).

68 (4) When a taxpayer required to make an advanced

69 payment of tax under paragraph one of this  
70 subsection-b makes out its return for the month of  
71 June, which is due on the fifteenth day of July, such  
72 taxpayer may claim as a credit against its liability  
73 under this article for tax on taxable transactions  
74 during the month of June, the amount of the  
75 advanced payment of tax made under paragraph one  
76 of this subsection (b).

**§11-15-30. Proceeds of tax; dedication of certain revenues.**

1 The proceeds of the tax imposed by this article shall  
2 be deposited in the general revenue fund of the state:  
3 *Provided*, That beginning the first day of July, one  
4 thousand nine hundred eighty-nine, and continuing  
5 each month thereafter through the last day of July,  
6 one thousand nine hundred ninety-two, the first five  
7 million dollars of proceeds of this tax for each month  
8 shall be paid into the "Fiscal Responsibility Fund"  
9 created by section nineteen, article one, chapter five of  
10 this code and used for the purposes specified therein,  
11 and that on and after the first day of August, one  
12 thousand nine hundred ninety-two, and continuing  
13 each month thereafter through the last day of August,  
14 one thousand nine hundred ninety-six, the first five  
15 million dollars of proceeds of this tax for each month  
16 shall be paid into the "Education Enhancement Fund"  
17 created by section nine-d, article six, chapter twelve of  
18 this code: *Provided, however*, That for the fiscal year  
19 one thousand nine hundred eighty-nine, one million  
20 dollars of the proceeds of the tax imposed by this  
21 article shall be dedicated to the cancer center at West  
22 Virginia University and eight million dollars of the  
23 proceeds of the tax imposed by this article shall be  
24 dedicated to the "Higher Education Salary Fund"  
25 which is hereby created in the state treasury. All  
26 moneys credited to the higher education salary fund  
27 shall be expended by the appropriate higher education  
28 governing board for further implementation of the fee  
29 schedules established in articles eight and nine,  
30 chapter eighteen-b of this code.

**ARTICLE 21. PERSONAL INCOME TAX.****§11-21-8. Credits against tax.**

1 (a) *Business and occupation tax credit.*—A credit  
2 shall be allowed against the tax imposed by section  
3 three of this article equal to the amount of the liability  
4 of the taxpayer for the taxable year for any tax  
5 imposed under article thirteen, chapter eleven of this  
6 code: *Provided*, That the amount of such business and  
7 occupation tax credit shall not exceed the portion of  
8 the tax imposed by this article which is attributable to  
9 the West Virginia taxable income derived by the  
10 taxpayer for the taxable year from the business or  
11 occupation with respect to which said tax under article  
12 thirteen was imposed. In case the West Virginia  
13 taxable income of a taxpayer includes income from a  
14 partnership, estate, trust or a corporation electing to  
15 be taxed under subchapter S of the Internal Revenue  
16 Code of 1954, as amended, a part of any tax liability of  
17 the partnership, estate, trust or corporation under said  
18 article thirteen shall be allowed to the taxpayer, in  
19 computing the credit provided for by this section, in  
20 an amount proportionate to the income of such part-  
21 nership, estate, trust or corporation, which is included  
22 in the taxpayer's West Virginia taxable income.

23 For purposes of this section, the tax imposed under  
24 article thirteen, chapter eleven of this code shall be  
25 the amount of the liability of the taxpayer for such tax  
26 under said article thirteen computed without reduc-  
27 tion for the tax credit for industrial expansion or  
28 revitalization allowed for such year.

29 (b) *Severance tax credit.*—On and after the first day  
30 of July, one thousand nine hundred eighty-seven, a  
31 credit shall be allowed against the tax imposed by  
32 section three of this article equal to the amount of the  
33 liability of the taxpayer for the taxable year for any  
34 tax imposed under article thirteen-a, chapter eleven of  
35 this code: *Provided*, That the amount of such sever-  
36 ance tax credit shall not exceed the portion of the tax  
37 imposed by this article which is attributable to the  
38 West Virginia taxable income derived by the taxpayer

39 for the taxable year from the activities with respect to  
40 which said tax under article thirteen-a was imposed.  
41 In case the West Virginia taxable income of a taxpayer  
42 includes income from a partnership, estate, trust or a  
43 corporation electing to be taxed under subchapter S of  
44 the Internal Revenue Code of 1954, as amended, a part  
45 of any tax liability of the partnership, estate, trust or  
46 corporation under said article thirteen-a shall be  
47 allowed to the taxpayer, in computing the credit  
48 provided for by this section, in an amount proportion-  
49 ate to the income of such partnership, estate, trust or  
50 corporation, which is included in the taxpayer's West  
51 Virginia taxable income.

52 (c) *Expiration of credit.*—The credit authorized in  
53 subsection (b) of this section shall expire and not be  
54 authorized or allowed for any taxable year beginning  
55 on or after the first day of October, one thousand nine  
56 hundred ninety.

**§11-21-74. Employer's return and payment of withheld taxes.**

1 (a) *General.*—Every employer required to deduct  
2 and withhold tax under this article shall, for each  
3 calendar quarter, on or before the last day of the  
4 month following the close of such calendar quarter,  
5 file a withholding return as prescribed by the tax  
6 commissioner and pay over to the tax commissioner  
7 the taxes so required to be deducted and withheld.  
8 Where the aggregate amount so deducted and with-  
9 held by any employer is less than twenty-five dollars  
10 in a calendar quarter and the aggregate for the  
11 calendar year can reasonably be expected to be less  
12 than one hundred dollars, the tax commissioner may  
13 by regulation permit an employer to file an annual  
14 return and pay over to the tax commissioner the taxes  
15 deducted and withheld on or before the last day of the  
16 month following the close of such calendar year. The  
17 tax commissioner may, if he believes such action  
18 necessary for the protection of the revenues, require  
19 any employer to make such return and pay to him the  
20 tax deducted and withheld at any time, or from time  
21 to time.

22     (b) *Monthly returns and payments of withheld tax*  
23 *on and after June 1, 1971.*—Notwithstanding the  
24 provisions of subsection (a), on and after June 1, 1971,  
25 every employer required to deduct and withhold tax  
26 under this article shall, for each of the first eleven  
27 months of the calendar year, on or before the twen-  
28 tieth day of the succeeding month and for the last  
29 calendar month of the year, on or before the last day  
30 of the succeeding month, file a withholding return as  
31 prescribed by the tax commissioner and pay over to  
32 the tax commissioner the taxes so required to be  
33 deducted and withheld, if such withheld taxes aggre-  
34 gate one hundred dollars or more for such month;  
35 except any employer with respect to whom the tax  
36 commissioner may have by regulation provided other-  
37 wise in accordance with the provisions of subsection  
38 (a): *Provided*, That in accordance with regulations  
39 promulgated by the tax commissioner, a payment of  
40 withheld tax may be subject to the credit set forth in  
41 section nine-b, article fifteen of this chapter and the  
42 credit set forth in section three-b, article fifteen-a of  
43 this chapter.

44     (c) *Deposit in trust for tax commissioner.*—When-  
45 ever any employer fails to collect, truthfully account  
46 for, or pay over the tax, or to make returns of the tax  
47 as required in this section, the tax commissioner may  
48 serve a notice requiring such employer to collect the  
49 taxes which become collectible after service of such  
50 notice, to deposit such taxes in a bank approved by the  
51 tax commissioner, in a separate account, in trust for  
52 and payable to the tax commissioner, and to keep the  
53 amount of such tax in such account until payment  
54 over to the tax commissioner. Such notice shall  
55 remain in effect until a notice of cancellation is served  
56 by the tax commissioner.

57     (d) Accelerated payment.

58     (1) Notwithstanding the provisions of subsections (a)  
59 and (b) of this section, for calendar years beginning  
60 after the thirty-first day of December, one thousand  
61 nine hundred ninety, every employer required to  
62 deduct and withhold tax whose average payment per

63 calendar month for the preceding calendar year under  
64 subsection (b) exceeded one hundred thousand dollars,  
65 shall remit the tax attributable to the first fifteen days  
66 of June each year on or before the twenty-third day  
67 of said month of June.

68 (2) For purposes of complying with paragraph one of  
69 this subsection (d), the employer shall remit an  
70 amount equal to the withholding tax due under this  
71 article on employee compensation subject to withhold-  
72 ing tax payable or paid to employees for the first  
73 fifteen days of June or, at the employer's election, the  
74 employer may remit an amount equal to fifty percent  
75 of the employer's liability for withholding tax under  
76 this article on compensation payable or paid to  
77 employees for the preceding month of May.

78 (3) For an employer which has not been in business  
79 for a full calendar year, the total amount the employer  
80 was required to deduct and withhold under subsection  
81 (b) for such prior calendar year, shall be divided by  
82 the number of months, including fractions of a month,  
83 that it was in business during such prior calendar  
84 year, and if that amount exceeds one hundred thou-  
85 sand dollars, the employer shall remit the tax attrib-  
86 utable to the first fifteen days of June each year on or  
87 before the twenty-third day of said month of June, as  
88 provided in paragraph two of this subsection (b).

89 (4) When an employer required to make an  
90 advanced payment of withholding tax under para-  
91 graph one of this subsection (d) makes out its return  
92 for the month of June, which is due on the twentieth  
93 day of July, such employer may claim as a credit  
94 against its liability under this article for tax on  
95 employee compensation paid or payable for employee  
96 services rendered during the month of June, the  
97 amount of the advanced payment of tax made under  
98 paragraph one of this subsection (d).

#### **ARTICLE 24. CORPORATION NET INCOME TAX.**

##### **§11-24-9a. Credits against primary tax; election of taxpayer.**

1 *Credit for primary taxes imposed under article*

2 *thirteen-a, chapter eleven of this code.*—A credit shall  
 3 be allowed against the primary tax imposed by this  
 4 article equal to the amount of the liability of the  
 5 taxpayer for the taxable year for the severance tax  
 6 imposed under article thirteen-a, chapter eleven of  
 7 this code: *Provided*, That the amount of such sever-  
 8 ance tax credit shall not exceed fifty percent of the  
 9 primary tax liability of the taxpayer under this article,  
 10 which is attributable to the West Virginia taxable  
 11 income derived by the taxpayer for the taxable year  
 12 from the activities with respect to which said tax  
 13 under article thirteen-a was imposed, and shall not in  
 14 any event exceed fifty percent of the primary tax  
 15 liability of the taxpayer under this article for such  
 16 taxable year: *Provided, however*, That the entire  
 17 amount of the severance tax liability of the taxpayer,  
 18 which was taken as a deduction in determining its  
 19 federal taxable income for the taxable year, shall be  
 20 an adjustment increasing federal taxable income  
 21 under section six of this article: *Provided further*, That  
 22 the taxpayer may at its option elect, in lieu of claiming  
 23 the credit allowable by this subsection, to not increase  
 24 its federal taxable income under section six of this  
 25 article and thereby take as a full deduction under this  
 26 article for the taxable year the amount of its severance  
 27 tax liability for the taxable year, which was taken as  
 28 a deduction on its federal return for such taxable year.

29 For purposes of this section, the tax imposed under  
 30 article thirteen-a, chapter eleven of this code shall be  
 31 the amount of the liability of the taxpayer for such tax  
 32 under said article thirteen-a computed without reduc-  
 33 tion for the tax credit for coal loading facilities or for  
 34 industrial expansion or revitalization allowed for such  
 35 year.

36 *Expiration of credit.*—The credit authorized in this  
 37 section shall expire and not be authorized or allowed  
 38 for any taxable year beginning on or after the first day  
 39 of October, one thousand nine hundred ninety.

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 1. STATE DEPOSITORIES.**



**§12-1-1. Legislative findings and purpose.**

1 The Legislature finds and declares that the efficient  
2 collection, disbursement, management and investment  
3 of public moneys by the state board of investments  
4 will benefit the citizens, teachers and public  
5 employees of this state by reducing the costs of  
6 government and providing sources of increased reve-  
7 nue without the necessity of increased taxation; and to  
8 achieve these goals, the board of investments, an  
9 independent entity immune to the changing political  
10 climate, shall provide a stable and continuous source  
11 of professional financial management, and shall be  
12 given the authority to develop and maintain modern  
13 systems, consistent with sound financial practices, for  
14 the collection, disbursement, management and invest-  
15 ment of such moneys.

**§12-1-2. Depositories for demand deposits; categories of  
demand deposits; competitive bidding for  
disbursement accounts; maintenance of dep-  
osits by board of investments.**

1 The state board of investments shall designate the  
2 state and national banks in this state which shall serve  
3 as depositories for all state funds placed in demand  
4 deposits. Any such state or national bank shall, upon  
5 request to such board, be designated as a state depos-  
6 itory for such deposits, if such bank meets the require-  
7 ments set forth in this chapter.

8 Demand deposit accounts shall consist of receipt,  
9 disbursement and investment accounts. Receipt  
10 accounts shall be those accounts in which are depos-  
11 ited moneys belonging to or due the state of West  
12 Virginia or any official, department, board, commis-  
13 sion or agency thereof.

14 Disbursement accounts shall be those accounts from  
15 which are paid moneys due from the state of West  
16 Virginia or any official, department, board, commis-  
17 sion, political subdivision or agency thereof to any  
18 political subdivision, person, firm or corporation,  
19 except moneys paid from investment accounts.

20 Investment accounts shall be those accounts estab-  
21 lished by the board of investments for the buying and  
22 selling of securities for investment for the state of  
23 West Virginia or any official, department, board,  
24 commission or agency thereof or to meet obligations to  
25 paying agents or for paying charges incurred for the  
26 custody, safekeeping and management of such securi-  
27 ties pursuant to the provisions of section five, article  
28 five of this chapter, or for paying the charges of any  
29 bank or trust company acting as paying agent or  
30 copaying agent for a bond issue of the state pursuant  
31 to the provisions of section seven-a, article one,  
32 chapter fifty-seven of this code.

33 The board of investments shall promulgate rules and  
34 regulations, in accordance with the provisions of  
35 chapter twenty-nine-a of the code of West Virginia, as  
36 amended, concerning depositories for receipt accounts  
37 and investment accounts prescribing the selection  
38 criteria, procedures, compensation and such other  
39 contractual terms as it considers to be in the best  
40 interests of the state giving due consideration to: (1)  
41 The activity of the various accounts maintained  
42 therein; (2) the reasonable value of the banking  
43 services rendered or to be rendered the state by such  
44 depositories; and (3) the value and importance of such  
45 deposits to the economy of the communities and the  
46 various areas of the state affected thereby.

47 The board of investments shall select depositories for  
48 disbursement accounts through competitive bidding by  
49 eligible banks in this state. The board shall promulgate  
50 rules and regulations, in accordance with the provi-  
51 sions of chapter twenty-nine-a of the code of West  
52 Virginia, as amended, prescribing the procedures and  
53 criteria for such bidding and selection. It shall, in its  
54 invitations for bids, specify the approximate amounts  
55 of deposits, the duration of contracts to be awarded  
56 and such other contractual terms as it considers to be  
57 in the best interests of the state, consistent with  
58 obtaining the most efficient service at the lowest cost.

59 The amount of money needed for current operation  
60 purposes of the state government, as determined by

61 the board of investments, shall be maintained at all  
62 times in the state treasury, in cash or in disbursement  
63 accounts with banks designated as depositories in  
64 accordance with the provisions of this section. No state  
65 officer or employee shall make or cause to be made  
66 any deposits of state funds in banks not so designated.

**§12-1-3. Depositories for interest earning deposits;  
qualifications.**

1 Any state or national bank or any state or federal  
2 savings and loan association in this state shall, upon  
3 request made to the board of investments, be desig-  
4 nated as an eligible depository for interest earning  
5 deposits of state funds if such bank or state or federal  
6 savings and loan association meets the requirements  
7 set forth in this chapter. For purposes of this article,  
8 the term "interest earning deposits" includes certifi-  
9 cates of deposit. The board of investments, shall make  
10 and apportion such interest earning deposits and shall  
11 prescribe the interest rates, terms and conditions of  
12 such deposits, all in accordance with the provisions of  
13 article six of this chapter: *Provided*, That state or  
14 federal savings and loan associations insured by an  
15 agency of the federal government shall be eligible for  
16 such deposits not in excess of one hundred thousand  
17 dollars: *Provided, however*, That notwithstanding any  
18 provision of this article to the contrary, no such  
19 interest earning deposits may be deposited in any  
20 depository which has been in existence over a period  
21 of five years which does not have a loan to deposit  
22 ratio of fifty percent or more and which does not have  
23 farm, single or multifamily residential unit loans in an  
24 amount greater than twenty-five percent of the  
25 amount of loans representing a loan-to-deposit ratio of  
26 fifty percent. For the purpose of making the foregoing  
27 calculation, the balances due the depository on the  
28 following loans shall be given effect: (1) Qualifying  
29 residential loans held by the depository; (2) qualifying  
30 loans made in participation with other financial  
31 institutions; (3) qualifying loans made in participation  
32 with agencies of the state, federal or local govern-  
33 ments; and (4) qualifying loans originated and serviced

34 by the depository but owned by an out-of-state inves-  
 35 tor. The computation of the criteria for eligibility  
 36 specified above shall be based on the average daily  
 37 balances of deposits, the average daily balances of total  
 38 loans and qualifying residential loans for the period  
 39 being reported.

**§12-1-4. Bonds to be given by depositories.**

1 Before allowing any money to be deposited with any  
 2 eligible depository in excess of the amount insured by  
 3 an agency of the federal government, the board of  
 4 investments shall require such depository to give a  
 5 collaterally secured bond, in the amount of not less  
 6 than ten thousand dollars, payable to the state of West  
 7 Virginia, conditioned upon the prompt payment,  
 8 whenever lawfully required, of any state money, or  
 9 part thereof, that may be deposited with such depos-  
 10 itory, or of any accrued interest on deposits. Such  
 11 bond shall be a continuous bond but may be increased  
 12 or decreased in amount or replaced by a new bond  
 13 with the approval of the board of investments. The  
 14 collateral security for such bond shall consist of bonds  
 15 of the United States, of the federal land banks, of the  
 16 federal home loan banks, or bonds of the state of West  
 17 Virginia or of any county, district or municipality of  
 18 this state, or other bonds or securities approved by the  
 19 board of investments. All bonds so secured are here  
 20 designated as collaterally secured bonds. Withdrawal  
 21 or substitution of any collateral pledged as security for  
 22 the performance of the conditions of such bond may  
 23 be permitted with the approval in writing of the state  
 24 board of investments. All depository bonds shall be  
 25 recorded by the board of investments in a book kept  
 26 in its office for the purpose, and a copy of such record,  
 27 certified by the board of investments, shall be prima  
 28 facie evidence of the execution and contents of such  
 29 bond in any suit or legal proceeding. All collateral  
 30 securities shall be delivered to or deposited for the  
 31 account of the board of investments, and in the event  
 32 said securities are delivered to the board of invest-  
 33 ments, it shall furnish a receipt therefor to the owner  
 34 thereof. The board of investments and its bondsmen

35 shall be liable to any person for any loss by reason of  
36 the embezzlement or misapplication of said securities  
37 by the board of investments or any of its employees,  
38 and for the loss thereof due to the board of invest-  
39 ments' negligence or the negligence of its employees;  
40 and such securities shall be delivered to the owner  
41 thereof when liability under the bond which they are  
42 pledged to secure has terminated. The board of  
43 investments may permit the deposit under proper  
44 receipt of such securities with one or more banking  
45 institutions within or outside the state of West Virginia  
46 and may contract with any such institution for safe-  
47 keeping and exchange of any such collateral securities,  
48 and may prescribe the rules and regulations for  
49 handling and protecting the same.

**§12-1-9. Transfer of funds by check or bank wire;  
requirements.**

1 Subject to applicable banking regulations or state  
2 law, the state board of investments may transfer funds  
3 by check or bank wire whenever actually needed to  
4 pay the warrants drawn by the auditor upon the  
5 treasury, to equalize deposits or to provide funds to  
6 purchase investments for the account of the state. All  
7 checks drawn for transfer of funds shall have printed  
8 or stamped on the face of same "for transfer of funds  
9 only", or if the transfer is made by wire, the bank  
10 wire and supporting documents shall be marked "for  
11 transfer of funds only".

**§12-1-10. Board of Investments to keep accounts with  
depositories; settlements with depositories;  
statements of depository balances; reconcilia-  
tion of statements and records.**

1 The state board of investments shall keep in its  
2 office a record showing the account of each depository.  
3 Under the account of each depository entry shall be  
4 made showing the amount and date of each deposit,  
5 the amount and date of each withdrawal and the  
6 balance on deposit. The board of investments shall  
7 cause the state's account with each depository to be  
8 settled at the end of every month of the year and the

9 balance in the depository to the credit of the board of  
10 investments to be carried forward to the account of  
11 the next month.

12 All the statements and records shall be reconciled  
13 monthly and the reconciled reports shall be kept in  
14 the board of investment's office. The reconciled  
15 records for each month shall be kept in the board of  
16 investment's office for a period of five years.

**§12-1-12. When treasurer shall make funds available to the  
board of investments; depositories outside  
the state.**

1 When the funds in the treasury exceed the amount  
2 needed for current operational purposes, as deter-  
3 mined by the board of investments, the treasurer shall  
4 make all of such excess available for investment by  
5 the board of investments, which shall invest the same  
6 for the benefit of the general revenue fund.

7 Whenever the funds in the treasury exceed the  
8 amount for which depositories within the state have  
9 qualified, or the depositories within the state which  
10 have qualified are unwilling to receive larger deposits,  
11 the board of investments may designate depositories  
12 outside the state, disbursement accounts being bid for  
13 in the same manner as required by depositories within  
14 the state, and when such depositories outside the state  
15 have qualified by giving the bond prescribed in section  
16 four of this article, the state treasurer shall deposit  
17 funds therein in like manner as funds are deposited in  
18 depositories within the state under this article.

19 The board of investments may transfer funds to  
20 banks outside the state for investment purposes or to  
21 meet obligations to paying agents outside the state and  
22 any such transfer must meet the same bond require-  
23 ments as set forth in this article.

**§12-1-13. Payment of banking services.**

1 The board of investments is authorized to pay for  
2 banking services, and services ancillary thereto, by  
3 either a compensating balance in a noninterest bearing  
4 account maintained at the financial institution provid-

5 ing the services or with a state warrant as described  
6 in section one, article five of this chapter.

7 If payment is made by a state warrant, the board of  
8 investments is authorized to establish within the  
9 consolidated fund an investment pool which will  
10 generate sufficient income to pay for all banking  
11 service provided to the state. All income earned by the  
12 investment pool shall be paid into a special account of  
13 the state board of investments to be known as the  
14 banking services account and shall be used solely for  
15 the purpose of paying for all banking services and  
16 services ancillary thereto, provided to the state.

**ARTICLE 1A. LINKED DEPOSIT PROGRAM.**

**§12-1A-1. Definitions.**

1 (a) "Board" means the West Virginia State Board of  
2 Investments.

3 (b) "Director" means the director of the governor's  
4 office of community and industrial development.

5 (c) "Eligible small business" means any business  
6 which employs two hundred or less employees or has  
7 gross annual receipts of four million dollars or less.

8 (d) "Eligible lending institution" means a financial  
9 institution that is eligible to make commercial loans, is  
10 a public depository of state funds and agrees to  
11 participate in the linked deposit program.

12 (e) "Linked deposit" means a certificate of deposit  
13 placed by the state board of investments with an  
14 eligible lending institution at up to three percent  
15 below current market rates, as determined and calcu-  
16 lated by the state board of investments, provided the  
17 institution agrees to lend the value of such deposit,  
18 according to the deposit agreement provided for by  
19 this article, to eligible small businesses at three  
20 percent below the present borrowing rate applicable to  
21 each specific business at the time of the deposit of  
22 state funds in the institution.

**§12-1A-2. Legislative findings.**

1 The Legislature finds that many small businesses

2 throughout the state are experiencing economic stag-  
 3 nation or decline, that high interest rates have caused  
 4 small businesses in this state to suffer disproportion-  
 5 ately in profitability and competition and that such  
 6 high interest rates have fostered a serious increase in  
 7 unemployment. The linked deposit program provided  
 8 for by this article is intended to provide a statewide  
 9 availability of lower cost funds for lending purposes  
 10 that will materially contribute to the economic revital-  
 11 ization of this state. Accordingly, it is declared to be  
 12 the public policy of the state through the linked  
 13 deposit program to create an availability of lower-cost  
 14 funds to inject needed capital into the business  
 15 community, sustain or improve business profitability,  
 16 protect the jobs of citizens of this state and assist  
 17 businesses located in any county declared to be a  
 18 federal disaster area by the Federal Emergency  
 19 Management Agency. The Legislature further finds  
 20 that the involvement of both the state board of  
 21 investments and the director in determining which  
 22 businesses will receive the benefits of the linked  
 23 deposit program is necessary in order for state funds  
 24 to be used in the most effective manner possible in  
 25 assisting small businesses throughout the state and  
 26 thereby maximizing the impact of the program.

**§12-1A-3. Limitations on investment in linked deposits.**

1 (a) The state board of investments may invest in  
 2 linked deposits: *Provided*, That at the time of the  
 3 placement of the linked deposit not more than ten  
 4 percent of the state's total investment portfolio is so  
 5 invested. The total amount so deposited at any one  
 6 time shall not exceed, in the aggregate, two hundred  
 7 twenty-five million dollars, of which fifty million  
 8 dollars shall be provided for linked deposits to West  
 9 Virginia flood victims from the twenty-nine counties  
 10 eligible for federal disaster aid as listed by the federal  
 11 emergency management agency: *Provided, however*,  
 12 That after the first day of April, one thousand nine  
 13 hundred eighty-seven, the state board of investments  
 14 shall reserve ten million dollars of the unallocated  
 15 aggregate for linked deposits to such West Virginia



16 flood victims and may use the remaining balance of  
17 such unallocated moneys in the regular linked deposit  
18 program: *Provided further*, That after the first day of  
19 January, one thousand nine hundred eighty-eight, the  
20 remaining balance of unallocated moneys may be used  
21 in the regular linked deposit program: *And provided*  
22 *further*, That effective the first day of July, one  
23 thousand nine hundred ninety-one, the board of  
24 investments may not invest in linked deposits until  
25 such time as the board of investments has determined  
26 that there are adequate funds available to meet the  
27 needs of the education enhancement fund, as set forth  
28 in section nine-d, article six of this chapter.

29 (b) Small business linked deposit funds shall not be  
30 used to provide each applicant with more than fifty  
31 thousand dollars for a reduced rate loan for each  
32 nonmanufacturing job created or preserved or provide  
33 more than one hundred twenty-five thousand dollars  
34 for a reduced rate loan for each manufacturing job  
35 created or preserved. This subsection shall not pre-  
36 clude any flood victim from applying for a linked  
37 deposit under the flood program.

**§12-1A-4. Applications for loan priority; loan package.**

1 (a) An eligible lending institution that desires to  
2 receive a linked deposit shall accept and review  
3 applications for loans from eligible small businesses.  
4 The lending institution shall apply all usual lending  
5 standards to determine the credit worthiness of each  
6 eligible small business.

7 (b) An eligible small business shall certify on its loan  
8 application that the reduced rate loan will be used  
9 exclusively to create new jobs or preserve existing  
10 jobs and employment opportunities. An eligible small  
11 business shall make a sworn affidavit stating that the  
12 reduced rate loan will not be used to refinance an  
13 existing debt, unless it can be demonstrated to show  
14 the business will fail if not granted such loan. Whoever  
15 knowingly makes a false statement concerning such  
16 application shall be prohibited from entering into the  
17 linked deposit loan program.

18 (c) In considering which eligible small businesses  
 19 should receive reduced rate loans, the eligible lending  
 20 institution shall give priority to the economic needs of  
 21 the area in which the business is located, including  
 22 whether the business is located in a county declared to  
 23 be a federal disaster area by the Federal Emergency  
 24 Management Agency, and the number of jobs to be  
 25 created. If jobs are to be preserved by the receipt of  
 26 such loan, the eligible lending institution shall decide  
 27 between small businesses that had no profit in the last  
 28 tax year verified by independent audit filed for relief  
 29 under the federal bankruptcy laws in the past year or  
 30 has been adversely affected by a nonreimbursed  
 31 casualty loss due to a natural disaster. An eligible  
 32 small business shall make a sworn affidavit stating  
 33 that one of the above mentioned circumstances applies  
 34 to their business. There shall also be a continuous  
 35 internal audit conducted by the state board of invest-  
 36 ments which shall be made available to the Legisla-  
 37 ture annually.

38 (d) The eligible financial institution shall forward to  
 39 the state board of investments a linked deposit loan  
 40 package, in the form and manner as prescribed by the  
 41 board. The package shall include such information as  
 42 required by the board, including the amount of the  
 43 loan requested and the number of jobs to be created  
 44 or sustained by each eligible small business. The  
 45 institution shall certify that each applicant is an  
 46 eligible small business, and shall, for each business,  
 47 certify the present borrowing rate applicable to each  
 48 specific eligible business.

**§12-1A-5. Acceptance or rejection of loan package; deposit agreement.**

1 (a) The board of investments may accept or reject a  
 2 linked deposit loan package or any portion thereof,  
 3 based on the ratio of state funds to be deposited to jobs  
 4 sustained or created: *Provided*, That notwithstanding  
 5 any provision of this article to the contrary, the board  
 6 of investments may not accept any linked deposit loan  
 7 package or any portion thereof unless the same has  
 8 been reviewed and approved by the director in his sole  
 9 discretion.

10 (b) The board of investments shall reject any linked  
11 deposit loan package if the small business requesting  
12 such loan is not in good standing with the state tax  
13 department, department of employment security and  
14 the workers' compensation fund, and these agencies  
15 shall provide the board of investments with such  
16 information as to the standing of each small business  
17 loan applicant, notwithstanding any provision of this  
18 code to the contrary.

19 (c) Any linked deposit loan package that is being  
20 made to refinance an existing debt, or any portion  
21 thereof, must meet one of the following criteria:

22 (1) The small business can demonstrate in good faith  
23 that it is experiencing a substantial loss in its current  
24 (fiscal or calendar) tax year period;

25 (2) The small business recently experienced a natu-  
26 ral disaster and suffered unreimbursable casualty  
27 losses;

28 (3) The small business has filed to recover under the  
29 Federal Bankruptcy Act and meets the criteria in (1)  
30 above; or

31 (4) The small business can provide compelling  
32 information to the board of investments that jobs will  
33 be saved and/or created as a result of loan refinancing.

34 (d) Upon acceptance of the linked deposit loan  
35 package or any portion thereof by the board of  
36 investments and the director, the board of investments  
37 may place certificates of deposit with the eligible  
38 lending institution at three percent below current  
39 market rates, as determined and calculated by the  
40 board of investments. Upon acceptance of the linked  
41 deposit loan package for flood victims or any portion  
42 thereof, the board of investments may place certifi-  
43 cates of deposit with the eligible lending institution at  
44 five percent below current market rates, as deter-  
45 mined and calculated by the board of investments.  
46 When necessary, the board may place certificates of  
47 deposit prior to acceptance of a linked deposit loan  
48 package.

49 (e) The eligible lending institution shall enter into a  
 50 deposit agreement with the board, which shall include  
 51 requirements necessary to carry out the purposes of  
 52 this article. Such requirements shall reflect the  
 53 market conditions prevailing in the eligible lending  
 54 institution's lending area. The agreement may include  
 55 a specification of the period of time in which the  
 56 lending institution is to lend funds upon the placement  
 57 of a linked deposit and shall include provisions for the  
 58 certificates of deposit to be placed for up to two-year  
 59 maturities that may be renewed for up to an addi-  
 60 tional two years. Interest shall be paid at the times  
 61 determined by the board.

**§12-1A-6. Rate of loan; certification and monitoring of  
 compliance; report.**

1 (a) Upon the placement of a linked deposit with an  
 2 eligible lending institution, such institution is required  
 3 to lend such funds to each approved eligible small  
 4 business listed in the linked deposit loan package  
 5 required in subsection (d), section four of this article,  
 6 and in accordance with the deposit agreement  
 7 required by subsection (c), section five of this article.  
 8 The loan shall be at three percent below the present  
 9 borrowing rate applicable to each business. The loan  
 10 shall be at five percent below the present borrowing  
 11 rate applicable to each flood victim. A certification of  
 12 compliance with this section in the form and manner  
 13 as prescribed by the board shall be required of the  
 14 eligible lending institution.

15 (b) The board shall take any and all steps necessary  
 16 to implement the linked deposit program and monitor  
 17 compliance of eligible lending institutions and eligible  
 18 small businesses. The board and the industrial devel-  
 19 opment authority shall notify each other at least  
 20 quarterly of the names of the businesses receiving  
 21 financial assistance from their respective programs.

22 By the first day of January, April, July and October  
 23 of each year, the board shall report on the linked  
 24 deposit program for the preceding calendar quarter to  
 25 the governor and to the joint committee on govern-

26 ment and finance. The reports shall set forth the  
27 linked deposits made by the board under the program  
28 during the quarter and shall include information  
29 regarding the nature, terms and amounts of the loans  
30 upon which the linked deposits were based and the  
31 eligible small business to which the loans were made.

**§12-1A-7. Liability of state, board of investments and director.**

1 The state, the board and the director are not liable  
2 to any eligible lending institution in any manner for  
3 payment of the principal or interest on the loan to an  
4 eligible small business. Any delay in payment or  
5 default on the part of an eligible small business does  
6 not in any manner affect the deposit agreement  
7 between the eligible lending institution and the board.

**ARTICLE 2. PAYMENT AND DEPOSIT AND OTHER AMOUNTS DUE  
THE STATE OR ANY POLITICAL SUBDIVISION.**

**§12-2-2. Itemized record of moneys received for deposit;  
regulations governing deposits; credit to state  
fund; exceptions.**

1 All officials and employees of the state authorized by  
2 statute to accept moneys due the state of West Virginia  
3 shall keep a daily itemized record of such moneys so  
4 received for deposit in the state treasury and shall  
5 deposit within twenty-four hours with the state board  
6 of investments all moneys received or collected by  
7 them for or on behalf of the state for any purpose  
8 whatsoever. The treasurer and the board of invest-  
9 ments shall promulgate rules and regulations, in  
10 accordance with the provisions of chapter twenty-  
11 nine-a of this code governing the procedure for such  
12 deposits.

13 The official or employee making such deposits with  
14 the state board of investments shall prepare such  
15 deposit lists in such manner and upon such report  
16 forms as may be prescribed by the board of invest-  
17 ments. Once the board has satisfied itself that all  
18 deposits have been promptly prepared and deposited,  
19 it shall transfer all such funds to a special bank

20 account of the state treasurer and provide him with  
21 such deposit report. The original of this report shall  
22 accompany the deposit to the treasurer. Certified or  
23 receipted copies shall be immediately forwarded by  
24 the state treasurer to the state auditor and to the  
25 secretary of administration, and a copy shall be  
26 provided to the board of investments. The original of  
27 the deposit report shall become a part of the treasurer's permanent record.

29 When so paid, such moneys shall be credited to the  
30 state fund and treated by the auditor and treasurer as  
31 part of the general revenue of the state: *Provided*,  
32 That all moneys received out of appropriations made  
33 by the Congress of the United States shall be recorded  
34 in special fund accounts, apart from the general  
35 revenues of the state, in the state treasury and all such  
36 moneys shall not be used for any purpose whatsoever  
37 unless and until authorized and directed by the  
38 Legislature, excepting the following funds which shall  
39 be recorded in separate accounts:

40 (a) All funds excluded by the provisions of section  
41 six, article eleven, chapter four of this code;

42 (b) All funds derived from the sale of farm and dairy  
43 products from farms operated by any agency of the  
44 state government other than the farm management  
45 commission;

46 (c) All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;

48 (d) All fees and funds collected at state educational  
49 institutions for student activities;

50 (e) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

52 (f) All moneys received from counties by institutions  
53 for the deaf and blind on account of clothing for  
54 indigent pupils;

55 (g) All insurance collected on account of losses by  
56 fire and refunds;

57 (h) All funds derived from bookstores and sales of

58 blank paper and stationery, and collections by the  
59 chief inspector of public offices;

60 (i) All moneys collected and belonging to the capitol  
61 building fund, state road fund, state road sinking  
62 funds, general school fund, school fund, state fund  
63 (moneys belonging to counties, districts and municipal-  
64 ities), state interest and sinking funds, state compensa-  
65 tion funds, the fund maintained by the public service  
66 commission for the investigation and supervision of  
67 applications and all funds and moneys payable to or  
68 received by the natural resources commission of West  
69 Virginia;

70 (j) All moneys collected or received under any act of  
71 the Legislature providing that funds collected or  
72 received thereunder shall be used for specific purposes.

73 All moneys, excepted as aforesaid, shall be paid into  
74 the state treasury in the same manner as collections  
75 not so excepted, and shall be recorded in separate  
76 accounts to be used and expended only for the pur-  
77 poses for which the same are authorized to be col-  
78 lected by law. The gross amount collected in all cases  
79 shall be paid into the state treasury, and commissions,  
80 costs and expenses of collection authorized by general  
81 law to be paid out of the gross collection are hereby  
82 authorized to be paid out of the moneys collected and  
83 paid into the state treasury in the same manner as  
84 other payments are made from the state treasury.

85 The state board of investments shall have authority  
86 to establish an imprest fund or funds in the office of  
87 any state agency or institution making proper applica-  
88 tion to the board. To implement this authority the  
89 board shall promulgate rules and regulations, in  
90 accordance with the provisions of chapter twenty-  
91 nine-a of this code. The board or its designee shall  
92 annually audit all such funds and prepare a list of all  
93 such funds showing the location and amount as of  
94 fiscal year end, retaining such list as a permanent  
95 record of the board until such time as the legislative  
96 auditor shall have completed an audit of the imprest  
97 funds of all agencies and institutions involved.

**§12-2-3. Deposit of moneys by state officials and employees.**

1 All officials and employees of the state authorized by  
2 statute to accept moneys due the state of West Virginia  
3 shall deposit such moneys in such manner as the  
4 board of investments shall direct and shall promptly  
5 transmit or cause to be transmitted such deposits,  
6 together with a certificate of deposit, as soon as  
7 practicable to the depository in which they desire to  
8 make the deposit, and shall retain and record the  
9 deposit lists.

**§12-2-4. Duty of depositories.**

1 Immediately upon the receipt of such deposit, it  
2 shall be the duty of the depository to credit the state  
3 board of investments with the amount of the deposit,  
4 to date and sign the certificate of deposit by some  
5 legally constituted official of the depository and  
6 promptly transmit such certificate to the state board of  
7 investments.

**§12-2-5. Deposits in correspondent banks of state depositories.**

1 When any payment of money has been made to the  
2 state for road bonds or other purposes outside of the  
3 state, the board of investments shall have authority to  
4 place the same to the credit of one or more state  
5 depositories in one or more of its correspondent banks  
6 located within or without the state. The board of  
7 investments shall, upon making such a deposit in such  
8 correspondent bank, secure from it a proper certificate  
9 of deposit certifying the amount and the name of the  
10 state depository to whose credit the deposit was made  
11 by the board of investments. The board of investments  
12 shall forward a copy of such certificate to the state  
13 depository receiving such deposit through its corre-  
14 spondent bank, and it shall be the duty of such  
15 depository immediately to issue to the state of West  
16 Virginia a proper certificate of deposit for the amount  
17 so deposited, dated the same day the deposit was made  
18 in such correspondent bank. Before making such  
19 deposit however, the board of investments shall secure  
20 written authority from such depository, designating



21 the name and address of its correspondent bank or  
22 banks in which deposits are to be made and the  
23 maximum amount to be deposited in each. The depos-  
24 itory bonds of all state depositories so authorizing and  
25 receiving such deposits in their correspondent banks  
26 shall be liable for such deposits the same as if the  
27 deposits had been made with them directly, whether  
28 such bonds are so conditioned or not, and all deposi-  
29 tory bonds hereafter issued shall so provide.

**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

**§12-3-1. Manner of payment from treasury; form of checks.**

1 Every person claiming to receive money from the  
2 treasury of the state shall apply to the auditor for a  
3 warrant for same. The auditor shall thereupon exam-  
4 ine the claim, and the vouchers, certificates and  
5 evidence, if any, offered in support thereof, and for so  
6 much thereof as he shall find to be justly due from the  
7 state, if payment thereof be authorized by law, and if  
8 there be an appropriation not exhausted or expired  
9 out of which it is properly payable, he shall issue his  
10 warrant on the treasurer, specifying to whom and on  
11 what account the money mentioned therein is to be  
12 paid, and to what appropriation the same is to be  
13 charged. On the presentation of such warrant to the  
14 treasurer, he shall ascertain whether the same has  
15 been drawn in pursuance of an appropriation made by  
16 law, and if he finds it to be so, he shall in that case,  
17 but not otherwise, endorse his check upon such  
18 warrant, directed to some depository, which check  
19 shall be payable to the order of the person who is to  
20 receive the money therein specified; or he may issue  
21 a bank wire in payment of such warrant. If such check  
22 shall not be presented for payment within six months  
23 after it is drawn, it shall then be the duty of the  
24 treasurer to credit it to the depository on which it was  
25 drawn, to credit the state fund with the amount, and  
26 immediately notify the auditor to make corresponding  
27 entries on his books. No state depository shall pay a  
28 check unless it is presented within six months after it  
29 is drawn and every check shall bear upon its face the  
30 words, "Void, unless presented for payment within six

31 months." All claims required by law to be allowed by  
 32 any court, and payable out of the state treasury, shall  
 33 have the seal of the court allowing or authorizing the  
 34 payment of the same affixed by the clerk of such court  
 35 to his certificate of its allowance; and no such claim  
 36 shall be audited and paid by the auditor unless the seal  
 37 of such court be thereto attached as aforesaid. No tax  
 38 or fee shall be charged by the clerk for affixing his  
 39 seal to the certificate, referred to in this section. The  
 40 treasurer and the board of investments shall jointly  
 41 promulgate rules and regulations, in accordance with  
 42 the provision of chapter twenty-nine-a of this code  
 43 governing the procedure for such payments from the  
 44 treasury.

**§12-3-11. Travel expenses; rules to be promulgated concern-  
 ing same; dues to voluntary organization;  
 recruitment expenses for West Virginia  
 higher education governing boards; moving  
 expenses of employees of West Virginia  
 higher education governing boards.**

1 The governor shall promulgate rules and regulations  
 2 concerning out-of-state travel by state officials and  
 3 employees, except those in the legislative and judicial  
 4 branches of the state government and except for the  
 5 attorney general, auditor, secretary of state, treasurer,  
 6 board of investments and commissioner of agriculture  
 7 and their employees. The Legislature, the supreme  
 8 court of appeals and the attorney general, auditor,  
 9 secretary of state, treasurer, board of investments and  
 10 commissioner of agriculture shall promulgate rules  
 11 and regulations concerning out-of-state travel for their  
 12 respective branches and departments of state govern-  
 13 ment. Copies of such rules and regulations shall be  
 14 filed with the auditor, and the secretary of state. It  
 15 shall be unlawful for the auditor to issue a warrant in  
 16 payment of any claim for out-of-state travel expenses  
 17 incurred by a state officer or employee unless such  
 18 claim meets all the requirements of the rules and  
 19 regulations so filed.

20 Payment for dues or membership in annual or other  
 21 voluntary organizations shall be made from the proper

22 item or appropriation after an itemized schedule of  
23 such organizations, together with the amount of such  
24 dues or membership, has been submitted to the budget  
25 director and approved by the governor.

26 It shall be lawful for a higher education governing  
27 board to authorize the payment of traveling expenses  
28 incurred by any person invited to visit the campus of  
29 any state institution of higher education or any other  
30 facility under control of the board to be interviewed  
31 concerning his possible employment by the board or  
32 agent thereof.

33 It shall be lawful for a higher education governing  
34 board to authorize payment of: (1) All or part of the  
35 reasonable expense incurred by a person newly  
36 employed by the board in moving his household  
37 furniture, effects and immediate family to his place of  
38 employment; and (2) all or part of the reasonable  
39 expense incurred by an employee of the board in  
40 moving his household furniture, effects and immediate  
41 family as a result of a reassignment of the employee  
42 which is considered desirable, advantageous to and in  
43 the best interest of the state: *Provided*, That no part of  
44 the moving expenses of any one such employee shall  
45 be paid more frequently than once in twelve months.

**§12-4-13. Bank reconciliations; balancing state accounts.**

1 The Legislature finds that the bank accounts of the  
2 treasury contain numerous unreconciled items and  
3 that the single audit report for the period ending on  
4 the thirtieth day of June, one thousand nine hundred  
5 eighty-nine, states that as of the end of the audit  
6 period there were forty million, ninety-three thou-  
7 sand, six hundred eighty-one dollars and forty-seven  
8 cents more in the bank accounts maintained by the  
9 state treasurer than recorded on the accounting  
10 records of the state. Therefore, the Legislature directs  
11 that:

12 (a) The state treasurer shall take all necessary  
13 actions to identify all unreconciled items on the bank  
14 accounts maintained by the state treasurer. All items  
15 identified on or before the thirtieth day of June, one

16 thousand nine hundred ninety, shall be recorded in  
17 the state account(s) to which they have been identi-  
18 fied. Any unreconciled items not identified on or  
19 before the thirtieth day of June, one thousand nine  
20 hundred ninety, shall be recorded in a special revenue  
21 account known as the "single audit account."

22 (b) All moneys identified in the single audit report  
23 as not having been recorded on the accounting records  
24 of the state treasurer, shall be recorded in the single  
25 audit account. If after the recording of said moneys in  
26 the single audit account, the treasurer is able to  
27 identify the appropriate state accounts the moneys  
28 should be credited to, he is hereby authorized to  
29 transfer such moneys from the single audit account to  
30 the appropriate account.

31 (c) Effective on the first day of July, one thousand  
32 nine hundred ninety, the state treasurer shall file a  
33 report with the governor reflecting all actions taken  
34 concerning unreconciled items in bank accounts  
35 maintained by the state treasurer through the period  
36 ending on the thirtieth day of June, one thousand nine  
37 hundred ninety. After the governor has reviewed the  
38 report and determined that the state treasurer has  
39 complied with all previous provisions of this code  
40 section, the governor shall certify the report to the  
41 board of investments. The board of investments is  
42 then authorized to use, in such manner as it deter-  
43 mines, the balance in the single audit account to  
44 eliminate any imbalance in the state accounts caused  
45 by the investment losses incurred during the period  
46 beginning on the first day of August, one thousand  
47 nine hundred eighty-four and ending on the thirty-  
48 first day of January, one thousand nine hundred  
49 eighty-nine.

50 (d) Effective on the first day of July, one thousand  
51 nine hundred ninety, the state treasurer shall take  
52 action to ensure that all bank accounts of the state  
53 treasurer are reconciled each month. If after six  
54 months from receipt of a bank statement, any items  
55 remain as unreconcilable, the state treasurer shall  
56 record such amounts as a debit or credit to the state's

57 general revenue fund. The board of investments shall  
58 keep in its office separate accounts with each deposi-  
59 tory and shall take action to ensure that all bank  
60 accounts of the board are reconciled each month. If  
61 after six months from receipt of a bank statement, any  
62 items remain as unreconcilable, the board shall record  
63 such amounts as a ~~debit~~ or credit to the state's general  
64 fund. *debit -* *DS*

**ARTICLE 5. PUBLIC SECURITIES.**

**§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.**

1 The treasurer of this state, unless otherwise  
2 expressly provided by law, shall be custodian of all  
3 securities required by law to be deposited with the  
4 state or held in legal custody by the state, and all  
5 departments of this state, commissioners or agents of  
6 the state, who hold any such securities, shall transfer  
7 and deliver the same to the state treasurer to be kept  
8 and held by him as legal custodian thereof until  
9 released in the manner provided by law.

10 The board of investments may by formal order of  
11 record fix fair and reasonable charges for the care,  
12 custody, exchange and substitution of securities depos-  
13 ited by insurance companies and companies issuing  
14 annuity contracts and such charges shall be collected  
15 from such companies by the state treasurer and  
16 deposited by him in the general revenue fund: *Pro-*  
17 *vided*, That no such charge shall be made against any  
18 such company having securities of the par value of less  
19 than three hundred thousand dollars deposited  
20 hereunder.

**§12-5-4. Treasurer and board of investments to keep accounts and make collections.**

1 It shall be the duty of the treasurer and the board  
2 of investments to keep an accurate account of all  
3 securities received by them respectively and collect  
4 and account for the interest as the same becomes due  
5 and payable and the principal whenever same is due.

**§12-5-6. When notes deemed securities; appraisal.**

1 (a) Whenever, by statute of this state, any public  
2 official, board, commission or department of this state  
3 is charged with the approval of securities required as  
4 collateral for the deposit of public or other funds, or  
5 required to be deposited with the state treasurer, or  
6 board of investments or an investment of capital or  
7 surplus or a reserve or other fund, is required to be  
8 maintained consisting of designated securities depos-  
9 ited with the board of investments, such securities  
10 shall, at the discretion of such public official, board,  
11 commission or department, be deemed to include and  
12 mean notes executed by the person or corporation  
13 required to make such deposit and made payable to  
14 the state of West Virginia upon demand, in the event  
15 of insolvency or default by such person or corporation,  
16 for the benefit of those for whom such securities are  
17 deposited, when such notes are secured by duly  
18 executed deeds of trust on improved, unencumbered  
19 real property located in the state and owned by the  
20 person or corporation executing such notes, said deeds  
21 of trust to be approved by the attorney general of the  
22 state as to sufficiency of form and manner of execu-  
23 tion and accompanied by proper abstracts of title and  
24 fire insurance policies equal to the amounts of such  
25 notes and recorded among the land records of the  
26 county in which the real property is located: *Provided,*  
27 That whenever any such note so secured by a deed of  
28 trust on real property owned by any such person or  
29 corporation is approved by any public official, board,  
30 commission or department of this state, the real  
31 property shall have an appraised value of at least  
32 thirty per centum more than the amount of such note,  
33 said value to be determined by an appraisal of two  
34 landowners, who are citizens of this state and gener-  
35 ally recognized as experienced real estate appraisers,  
36 appointed by the public official, board, commission or  
37 department, charged with the approval of such secur-  
38 ities, the expenses of such appraisal to be borne by the  
39 person or corporation required to make such deposit,  
40 and each unit of such real property shall have an  
41 appraised value of at least fifty thousand dollars.

42 By improved real property as used herein is meant  
43 all real property within the limits of an incorporated  
44 city or town on which permanent buildings suitable  
45 for residential, industrial or commercial use are  
46 located.

47 Real property, for purposes hereof, shall not be  
48 deemed to be encumbered by reason of the existence  
49 of instruments reserving rights-of-way, sewer rights  
50 and rights in walls, nor by reason of building restric-  
51 tions or other restrictive covenants, nor by reason of  
52 the fact that it, or any part thereof, is subject to lease  
53 under which rents or profits are reserved to the  
54 owner: *Provided*, That the deed of trust for such  
55 investment is a full and unrestricted first lien upon  
56 such property.

57 (b) Any such public official, board, commission or  
58 department of this state charged with the approval of  
59 securities required to be deposited as aforesaid, shall,  
60 at least annually and oftener if deemed proper,  
61 appoint a disinterested person or persons, not exceed-  
62 ing three, to make an examination and appraisal of the  
63 securities so deposited to determine if such securities  
64 meet the requirements of the law of this state, and the  
65 cost of such examination and appraisal not less than  
66 ten dollars nor more than twenty-five dollars per diem  
67 for each person, and expenses, shall be borne by the  
68 person or corporation required to make such deposits  
69 as security.

#### **ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.**

##### **§12-6-1a. Legislative findings.**

1 The Legislature finds and declares that teachers and  
2 other public employees throughout the state are  
3 experiencing economic difficulty and that in order to  
4 reduce this economic hardship on these dedicated  
5 public employees, and to help foster sound financial  
6 practices, the state board of investments is given the  
7 authority to develop, implement and maintain an  
8 efficient and modern system for the collection, dis-  
9 bursement, investment and management of the state's  
10 money. The Legislature further finds that in order to

11 implement these sound fiscal policies, the board of  
 12 investment shall operate as an independent board with  
 13 its own full-time staff of financial professionals  
 14 immune to changing political climates, in order to  
 15 provide a stable and continuous source of professional  
 16 financial management.

**§12-6-4. Officers; executive secretary; term; organization;  
 board staff; surety bonds for members and  
 employees.**

1 (a) The governor shall be the chairman and the  
 2 custodian of all funds, securities and assets held by the  
 3 board. The board shall elect an executive secretary to  
 4 serve for a term of six years, such election to be held  
 5 at the board's first meeting after the first effective  
 6 date of this article. Effective with any vacancy in the  
 7 position of executive secretary, the board shall appoint  
 8 an executive secretary to serve at the will and plea-  
 9 sure of the board, which executive secretary may not  
 10 be a member of the board: *Provided*, That the execu-  
 11 tive secretary shall have at least a bachelor's degree in  
 12 either business administration or accounting in an  
 13 accredited program and/or have at least five years'  
 14 experience in investment management or securities  
 15 markets, said experience to have occurred within the  
 16 ten years next preceding the date of appointment of  
 17 the secretary: *Provided, however*, That the executive  
 18 secretary may be paid a salary as determined by the  
 19 board out of appropriations by the Legislature: *Pro-*  
 20 *vided further*, That the board shall appoint a staff to  
 21 act for the board.

22 (b) The board shall meet quarterly and may include  
 23 in its bylaws procedures for the calling and holding of  
 24 additional meetings.

25 (c) Each member of the board shall give a separate  
 26 and additional fidelity bond from a surety company  
 27 qualified to do business within this state in a penalty  
 28 amount of two hundred fifty thousand dollars for the  
 29 faithful performance of his duties as a member of the  
 30 board. In addition, the board will purchase a blanket  
 31 bond for the faithful performance of its duties in the



32 amount of five million dollars excess of the two  
33 hundred fifty thousand dollar individual bond  
34 required of each member by the provisions of this  
35 section. The board may require a fidelity bond from a  
36 surety company qualified to do business in this state  
37 for any person who has charge of, or access to, any  
38 securities, funds or other moneys held by the board,  
39 and the amount of such fidelity bond shall be fixed by  
40 the board. The premiums payable on all fidelity bonds  
41 shall be an expense of the board.

**§12-6-5. Powers of the board.**

1 The board may exercise all powers necessary or  
2 appropriate to carry out and effectuate its corporate  
3 purposes. The board may:

4 (1) Adopt and use a common seal and alter the same  
5 at pleasure;

6 (2) Sue and be sued;

7 (3) Enter into contracts and execute and deliver  
8 instruments;

9 (4) Acquire (by purchase, gift or otherwise), hold,  
10 use and dispose of real and personal property, deeds,  
11 mortgages and other instruments;

12 (5) Promulgate and enforce bylaws and rules for the  
13 management and conduct of its affairs;

14 (6) Retain and employ legal, accounting, financial  
15 and investment advisors and consultants;

16 (7) Acquire (by purchase, gift or otherwise), hold,  
17 exchange, pledge, lend and sell or otherwise dispose of  
18 securities and invest funds in interest earning deposits;

19 (8) Maintain accounts with banks, securities dealers  
20 and financial institutions both within and outside this  
21 state;

22 (9) Engage in financial transactions whereby secur-  
23 ities are purchased by the board under an agreement  
24 providing for the resale of such securities to the  
25 original seller at a stated price;

26 (10) Engage in financial transactions whereby secur-  
 27 ities held by the board are sold under an agreement  
 28 providing for the repurchase of such securities by the  
 29 board at a stated price;

30 (11) Consolidate and manage moneys, securities and  
 31 other assets of the pension funds and other funds and  
 32 accounts of the state and the moneys of political  
 33 subdivisions which may be made available to it under  
 34 the provisions of this article;

35 (12) Enter into agreements with political subdivi-  
 36 sions of the state whereby moneys of such political  
 37 subdivisions are invested on their behalf by the board;

38 (13) Charge and collect administrative fees from  
 39 political subdivisions for its services;

40 (14) Exercise all powers generally granted to and  
 41 exercised by the holders of investment securities with  
 42 respect to management thereof;

43 (15) Contract with one or more banking institutions  
 44 in or outside the state for the custody, safekeeping and  
 45 management of securities held by the board;

46 (16) Develop and implement a centralized receipts  
 47 processing center.

**§12-6-6. Costs and expenses; fees for services; special  
 revenue account; costs of determining third  
 parties' liability; recoupment of investment  
 losses.**

1 (a) The board shall make a charge against the  
 2 earnings of the various funds managed by the board  
 3 for all necessary expenses of the board. The charge  
 4 shall be on a pro rata basis of actual earnings of the  
 5 various funds managed by the board. The charge shall  
 6 be deposited to the credit of the general revenue fund.

7 (b) There is hereby created in the state treasury a  
 8 special revenue account to be known as the "loss  
 9 expenses account". The purpose of this account is to  
 10 provide funds to the board of investments to pay costs,  
 11 fees and expenses incurred, or to be incurred, for the  
 12 following: (1) Investigation and pursuit of claims

13 against third parties for the investment losses incurred  
14 during the period beginning the first day of August,  
15 one thousand nine hundred eighty-four and ending on  
16 the thirty-first day of January, one thousand nine  
17 hundred eighty-nine; (2) for consulting services  
18 regarding the restructuring of office of the treasurer  
19 following said losses; and (3) for implementation of the  
20 recommendations made as result of the consultations  
21 regarding restructuring. That special revenue account  
22 shall be funded by depositing income derived by the  
23 board from securities lending and recoveries from  
24 third parties. The board is authorized to deposit into  
25 the special revenue account, and to expend in accor-  
26 dance with the provisions of this section, those funds  
27 received from such recoveries and not more than two  
28 million dollars annually from income derived by the  
29 board from securities lending. Funds in the loss  
30 expense account in excess of reasonably estimated  
31 costs, fees and expenses for any fiscal year and any  
32 funds remaining in such special revenue account at  
33 the end of each fiscal year after expenditures, for the  
34 purposes specified above, may be transferred by the  
35 board to its "liquidity investment pool", to be used, in  
36 such manner as the board determines, to eliminate the  
37 present imbalance in the state accounts caused by the  
38 investment losses described above in this subsection.  
39 The authority for this special revenue account expires  
40 on the thirtieth day of June, one thousand nine  
41 hundred ninety-five.

**§12-6-9d. Legislative findings; loans to the state; purpose for  
which moneys transferred may be disbursed  
and expended; terms and conditions for  
repayment; creation of special account in  
state treasury.**

1 (a) The Legislature hereby finds and declares that  
2 the West Virginia supreme court of appeals has  
3 determined that public education has a constitution-  
4 ally preferred status; that there is a large amount of  
5 investable funds in the consolidated pension fund; that  
6 loans made under commercially reasonable terms to  
7 finance needed public education improvements are

8 necessary investments in the future of West Virginia;  
9 and that loans from the consolidated pension fund will  
10 assist in financing the needs of primary and secondary  
11 education, without in any way impairing the solvency  
12 or financial soundness of the consolidated pension  
13 fund. This section is enacted in view of these findings.

14 (b) Whenever the governor determines that there  
15 are insufficient general revenue funds available for  
16 the timely payment for necessary improvements in  
17 public education as appropriated by the Legislature in  
18 the budget bills for the fiscal years one thousand nine  
19 hundred ninety-one and one thousand nine hundred  
20 ninety-two, the governor may request the state board  
21 of investments to lend those moneys necessary to meet  
22 such payment and the state board of investments shall  
23 transfer moneys from the consolidated pension fund to  
24 the special sinking fund account created in the state  
25 treasury by subsection (d) of this section, in the  
26 amount determined by the governor to be sufficient  
27 and necessary to meet such payments, within the  
28 amount determined by the board of investments to be  
29 prudently available. The manner and timing of such  
30 transfers shall be in the discretion of the board of  
31 investments. The total of the amounts transferred may  
32 not exceed a total of one hundred million dollars  
33 during the fiscal years one thousand nine hundred  
34 ninety-one and one thousand nine hundred ninety-  
35 two. On the date the loan is transferred to the special  
36 sinking fund created in subsection (d) of this section,  
37 interest shall accrue at the current interest rate of the  
38 fund from which the loan originated, plus one-fourth  
39 of one percent, and the current interest rate shall be  
40 recalculated every six months.

41 (c) Full repayment of all moneys transferred, with  
42 interest, shall be made to the board of investments by  
43 payment into such pension fund from amounts  
44 appropriated by the Legislature or in the absence of  
45 appropriations from the amounts specified in section  
46 thirty, article fifteen, chapter eleven of this code, by  
47 budget action as first priority from the moneys  
48 available for each fiscal year. Repayment of the loans

49 shall begin six months from the date the funds were  
50 transferred and payments shall be made every six  
51 months thereafter, or sooner if agreed to in writing by  
52 the board of investments and the governor: *Provided*,  
53 That all loans shall be repaid in full by the last day of  
54 August, one thousand nine hundred ninety-six.

55 (d) There is hereby created in the state treasury a  
56 special account, designated the "Education Enhance-  
57 ment Fund", which is a sinking fund for the deposit,  
58 withdrawal and repayment of moneys transferred  
59 pursuant to this section and section thirty, article  
60 fifteen, chapter eleven of this code, in accordance with  
61 the special fund doctrine for budgetary transfer  
62 activities involving more than one fiscal year. Manage-  
63 ment of such fund shall be a responsibility of the  
64 board of investments. If any moneys remain in said  
65 fund after repayment in full to the appropriate  
66 pension fund or funds, such moneys shall be trans-  
67 ferred to the general revenue fund within thirty days  
68 of the last repayment.

69 (e) Upon the written request of the governor, the  
70 board of investments shall transfer to the general  
71 revenue fund, from the funds available in the educa-  
72 tional enhancement fund, those funds necessary for  
73 the timely payment for necessary improvements in  
74 public education as appropriated by the Legislature.

### **CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.**

#### **ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.**

##### **§13-1-14. Resolution authorizing issuance and fixing terms of bonds.**

1 If three-fifths of all the votes cast for and against the  
2 proposition to incur debt and issue negotiable bonds  
3 shall be in favor of the same, the governing body of  
4 the political division shall, by resolution, authorize the  
5 issuance of such bonds in an amount not exceeding the  
6 amount stated in the proposition; fix the date thereof;  
7 set forth the denominations in which they shall be  
8 issued, which denominations shall be one hundred  
9 dollars or multiples thereof; determine the rate or

10 rates of interest which the bonds shall bear, which  
 11 rate or rates of interest shall be within the maximum  
 12 rate stated in the proposition submitted to vote and  
 13 payable semiannually, prescribe the medium with  
 14 which the bonds shall be payable; require that the  
 15 bonds shall be made payable at the office of the state  
 16 board of investments and at such other place or places  
 17 as the body issuing the same may designate; provide  
 18 for a sufficient levy to pay the annual interest on the  
 19 bonds and the principal at maturity; fix the times  
 20 within the maximum period, as contained in the  
 21 proposition submitted to vote, when the bonds shall  
 22 become payable, which shall not exceed thirty-four  
 23 years from the date thereof; and prescribe a form for  
 24 executing the bonds authorized.

**§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.**

1 The bonds issued hereunder may be registered or  
 2 coupon bonds. Coupon bonds may be registered as to  
 3 the principal in the owner's name by the state board  
 4 of investments on books which shall be kept at its  
 5 office for the purpose and the registration shall also be  
 6 noted on the bonds, after which no transfer shall be  
 7 valid unless made by the state board of investments on  
 8 the books of registration and similarly noted on the  
 9 bonds. Bonds registered as to principal may be dis-  
 10 charged from registration by being transferred to  
 11 bearer, after which they shall be transferable by  
 12 delivery; but may again, and from time to time, be  
 13 registered as to the principal amount as before. The  
 14 registration of coupon bonds as to the principal sum  
 15 shall not affect the negotiability of the interest cou-  
 16 pons, but title to the same shall pass by delivery.

**§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.**

1 Coupon bonds may also be registered as to the  
 2 interest by the holder surrendering the bonds with the  
 3 unpaid coupons attached, which bonds and coupons  
 4 shall be canceled by the state board of investments.  
 5 New bonds of the same date and tenor and for the

6 same amounts as the bonds surrendered, or, at the  
7 option of the holder, a single bond for the aggregate  
8 amount of the bonds surrendered, but without interest  
9 coupons attached, shall be issued in the place of the  
10 coupon bonds and registered in the manner required  
11 in the preceding section. A registered bond may at any  
12 time be surrendered and be exchanged by the holder  
13 for a coupon bond by the holder delivering the  
14 registered bond to the state board of investments who  
15 shall cancel the same and who shall cause a new bond  
16 of the same date and tenor and for the same amount  
17 to be issued, and with interest coupons for the interest  
18 thereafter to accrue thereon attached, and deliver the  
19 same to the holder of the surrendered bond. The  
20 governing body of the county, municipal corporation  
21 or school district which issued the original bond shall  
22 issue and execute the new bond required by this  
23 section and shall pass the resolutions and ordinances  
24 necessary to authorize the same. The expense of such  
25 registration shall in all cases be paid by the holder of  
26 the bonds.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

#### **§18-9A-1. Legislative findings; public school support plan.**

1 The Legislature finds and declares that the future of  
2 education in this state is dependent upon a plan of  
3 financial support for the public schools which provides  
4 for a fair and adequate pay scale for teachers sufficient  
5 to insure teacher excellence, as well as adequate  
6 financial support for the public schools generally; upon  
7 an economic base which insures levels of revenue  
8 sufficient to fund the public schools; and upon inde-  
9 pendent professional management of public funds in  
10 order to assure a climate of financial stability and  
11 responsibility in which construction and maintenance  
12 of school facilities becomes possible.

13 The plan of support for the public schools, which  
14 will be known as the West Virginia public school  
15 support plan, will fix statutorily both state and county  
16 responsibility for the financing of the same. In enact-

17 ing this plan, the Legislature has in mind the following  
 18 purpose: To effect a basic foundation support plan that  
 19 shall provide for program growth which will assure  
 20 more equitable educational opportunity for all chil-  
 21 dren and youth irrespective of where they may live.

**§18-9A-4. Foundation allowance for professional educators.**

1 The basic foundation allowance to the county for  
 2 professional educators shall be the amount of money  
 3 required to pay the state minimum salaries, in accor-  
 4 dance with provisions of article four, chapter eighteen-  
 5 a of the code, to such personnel employed: *Provided,*  
 6 That in making this computation no county shall  
 7 receive an allowance for such personnel which num-  
 8 ber is in excess of fifty-four and thirty-three one-  
 9 hundredths professional educators to each one thou-  
 10 sand students in adjusted enrollment: *Provided,*  
 11 *however,* That for the school year commencing on the  
 12 first day of July, one thousand nine hundred ninety-  
 13 one and thereafter, no county shall receive an allow-  
 14 ance for such personnel which number is in excess of  
 15 fifty-three and one-half professional educators to each  
 16 one thousand students in adjusted enrollment: *Pro-*  
 17 *vided further,* That any county not qualifying under  
 18 the provision of section fourteen of this article shall be  
 19 eligible for a growth rate in professional personnel in  
 20 any one year not to exceed twenty percent of its total  
 21 potential increase under this provision, except that in  
 22 no case shall such limit be fewer than five profession-  
 23 als: *And provided further,* That the number of and the  
 24 allowance for personnel paid in part by state and  
 25 county funds shall be prorated: *And provided further,*  
 26 That where two or more counties join together in  
 27 support of a vocational or comprehensive high school  
 28 or any other program or service, the professional  
 29 educators for such school or program may be prorated  
 30 among the participating counties on the basis of each  
 31 one's enrollment therein and that such personnel shall  
 32 be considered within the above-stated limit: *And*  
 33 *provided further,* That in the school year beginning  
 34 the first day of July, one thousand nine hundred  
 35 eighty-eight, and in each school year thereafter, each



36 county board shall establish and maintain a minimum  
37 ratio of fifty professional instructional personnel per  
38 one thousand students in adjusted enrollment: *And*  
39 *provided further*, That no county shall have less than  
40 a total of five principals and central office administra-  
41 tors. Any county board which does not establish and  
42 maintain this minimum ratio shall suffer a pro rata  
43 reduction in the allowance for professional educators  
44 under this section, and, further, any county board  
45 which does not establish and maintain this minimum  
46 ratio shall utilize any and all allocations to it by  
47 provision of section fourteen of this article solely to  
48 employ professional instructional personnel until the  
49 minimum ratio is attained. Every county shall utilize  
50 methods other than reductions in force, such as  
51 attrition and early retirement, before implementing  
52 their reductions in force policy to comply with the  
53 limitations of this section. It is the intent of the  
54 Legislature that in planning reductions in force to  
55 comply with reduced ratios of professional educators  
56 to students in adjusted enrollment, county boards shall  
57 consider positions for elimination in the following  
58 order: (1) Central office administrators, (2) assistant  
59 principals, and (3) principals.

60 No county shall increase the number of administra-  
61 tive personnel employed as either professional educa-  
62 tors or pay grade "H" service personnel above the  
63 number which were employed, or for which positions  
64 were posted, on the thirtieth day of June, one thou-  
65 sand nine hundred ninety, and, therefore, county  
66 boards shall whenever possible utilize classroom  
67 teachers for curriculum administrative positions  
68 through the use of modified or extended contracts:  
69 *Provided*, That the governor shall submit a recom-  
70 mendation to the Legislature at the beginning of the  
71 regular session thereof in the year one thousand nine  
72 hundred ninety-one, which proposes a method for  
73 establishing a responsible level of administrative  
74 support for each county school system and a pay scale  
75 differentiation on a daily rate between classroom  
76 positions and administrative positions when all other  
77 factors are equal.

78 Every county board of education shall annually  
 79 determine the number of professional educators  
 80 employed that exceeds the number allowed by the  
 81 public school support plan and determine the amount  
 82 of salary supplement that would be available per state  
 83 authorized employee if all expenditures for such  
 84 excess employees were converted to annual salaries  
 85 for state authorized professional educators within their  
 86 county. Such information shall be published annually  
 87 in each school report card of each such county.

**§18-9A-5a. Ratio of foundation allowances for professional  
 educators and service personnel to net  
 enrollment.**

1 (a) The purpose of this section is to establish maxi-  
 2 mum ratios between the numbers of professional  
 3 educators and service personnel in the counties which  
 4 are funded through the public school support plan and  
 5 the net enrollment in the counties, such ratios are in  
 6 addition to the ratios provided for in sections four and  
 7 five of this article. It is the intent of the Legislature to  
 8 adjust these ratios pursuant to legislative act as may  
 9 be appropriate when additional personnel are needed  
 10 to perform additional duties.

11 (b) Commencing with the school year one thousand  
 12 nine hundred eighty-nine—ninety, and each year  
 13 thereafter, in computing the basic foundation allow-  
 14 ance to a county for professional educators and the  
 15 basic foundation allowance to a county for service  
 16 personnel under sections four and five of this article,  
 17 a county shall not receive an allowance for such  
 18 personnel which number per one thousand students in  
 19 net enrollment is in excess of the number of profes-  
 20 sional educators and the number of service personnel  
 21 in the county computed as follows:

22	Maximum	
23	professional	Maximum service
24	educators per 1000	personnel per 1000
25	For the net enrollment	net enrollment
26	school year the preceding year	the preceding year
27	1989-90	76.5 45.5

28	1990-91	76.0	45.0
29	1991-92	75.5	44.5
30	1992-93	75.0	44.0
31	1993-94	74.5	43.75
32	1994-95 and	74.0	43.5
33	thereafter		

34 (c) Every county shall utilize methods other than  
 35 reductions in force, such as attrition and early retire-  
 36 ment, before implementing their reductions in force  
 37 policy to comply with the limitations of this section.

38 (d) For the school years one thousand nine hundred  
 39 eighty-nine—ninety and one thousand nine hundred  
 40 ninety—ninety-one only, if a school district loses more  
 41 than six percent of the number chargeable for the  
 42 previous school year for professional educator posi-  
 43 tions or service personnel positions, due to the maxi-  
 44 mum ratios established in subsection (b) of this  
 45 section, it may apply to the state board for a waiver of  
 46 said ratios to the extent that the loss exceeds either six  
 47 percent of its professional educators or service person-  
 48 nel: *Provided*, That the county board of education  
 49 establishes and maintains the minimum ratio of  
 50 professional instructional personnel per one thousand  
 51 students in adjusted enrollment as required in section  
 52 four of this article. Waivers shall be determined on a  
 53 case by case basis according to rules adopted by the  
 54 state board and granted to the extent funds are  
 55 appropriated by the Legislature for this purpose. Prior  
 56 to the adoption of such rules, the state board shall  
 57 conduct a thorough review of the staffing patterns in  
 58 each county. Any personnel positions funded as a  
 59 result of a waiver granted under the provisions of this  
 60 subsection shall not be included in the computations  
 61 set forth in sections four and five of this article.

**§18-9A-8. Foundation allowance for administrative cost.**

1 For the fiscal year beginning on the first day of July,  
 2 one thousand nine hundred ninety, the allowance for  
 3 administrative cost shall be equal to one and twenty-  
 4 five one hundredths percent of the allocation for  
 5 professional educators, as determined in section four

6 of this article as of the first day of July, one thousand  
7 nine hundred ninety.

8 Distribution of the computed allowance for the fiscal  
9 year beginning on the first day of July, one thousand  
10 nine hundred ninety, shall be made as follows:

11 (1) Fifty-six percent of the allowance shall be  
12 distributed to the counties in equal amounts; and

13 (2) Forty-four percent of the allowance shall be  
14 distributed to the regional educational service agencies  
15 in accordance with rules adopted by the state board.  
16 The allowance for regional educational service agen-  
17 cies shall be excluded from the computation of total  
18 basic state aid as provided for in section twelve of this  
19 article.

20 For the fiscal year beginning on the first day of July,  
21 one thousand nine hundred ninety-one, and for each  
22 fiscal year thereafter, the allowance for administrative  
23 cost shall be equal to one hundred fifty dollars  
24 multiplied by the number of professional educators  
25 authorized in compliance with sections four and five-  
26 a of this article. The allowance shall be distributed to  
27 the counties in equal amounts.

**§18-9A-8a. Foundation allowance for regional educational  
service agencies.**

1 For the fiscal year beginning on the first day of July,  
2 one thousand nine hundred ninety-one, and for each  
3 fiscal year thereafter, the foundation allowance for  
4 regional educational service agencies shall be equal to  
5 sixty-three one hundredths percent of the allocation  
6 for professional educators as determined in section  
7 four of this article. The allowance shall be distributed  
8 to the regional educational service agencies in accor-  
9 dance with rules adopted by the state board. The  
10 allowance for regional educational service agencies  
11 shall be excluded from the computation of total basic  
12 state aid as provided for in section twelve of this  
13 article.

**§18-9A-9. Foundation allowance for other current expense  
and substitute employees.**

1 The total allowance for other current expense and  
2 substitute employees shall be the sum of the following:  
3 *Provided*, That each of the three amounts set forth in  
4 subparagraphs (1), (2) and (3) of this section shall not  
5 exceed the preceding year's allowance by more than  
6 four percent.

7 (1) For current expense, for the year one thousand  
8 nine hundred ninety—ninety-one and thereafter, ten  
9 percent of the sum of the computed state allocation for  
10 professional educators and service personnel as deter-  
11 mined in sections four and five of this article. Distri-  
12 bution to the counties shall be made proportional to  
13 the average of each county's average daily attendance  
14 for the preceding year and the county's second month  
15 net enrollment; plus

16 (2) For professional educator substitutes or current  
17 expense, two and five-tenths percent of the computed  
18 state allocation for professional educators as deter-  
19 mined in section four of this article. Distribution to the  
20 counties shall be made proportional to the number of  
21 professional educators authorized for the county in  
22 compliance with sections four and five-a of this article;  
23 plus

24 (3) For service personnel substitutes or current  
25 expense, two and five-tenths percent of the computed  
26 state allocation for service personnel as determined in  
27 section five of this article. Distribution to the counties  
28 shall be made proportional to the number of service  
29 personnel authorized for the county in compliance  
30 with sections five and five-a of this article; plus

31 (4) For academic materials, supplies and equipment  
32 for use in instructional programs, two hundred dollars  
33 multiplied by the number of professional instructional  
34 personnel employed in the schools of the county.  
35 Distribution shall be made to each county for alloca-  
36 tion to the faculty senate of each school in the county  
37 on the basis of two hundred dollars per professional  
38 instructional personnel employed at the school. Fac-  
39 ulty senate means a faculty senate created pursuant to  
40 section five, article five-a of this chapter. Decisions for

41 the expenditure of such funds shall be made at the  
 42 school level by the faculty senate in accordance with  
 43 the provisions of said section five, article five-a, and  
 44 shall not be used to supplant the current expense  
 45 expenditures of the county.

46 (5) For the school year one thousand nine hundred  
 47 ninety—ninety-one only, there shall be a one-time  
 48 additional appropriation of five hundred thousand  
 49 dollars to be distributed to the counties on a needs  
 50 basis. Funds shall be distributed to those very few  
 51 counties in which costs for the delivery of educational  
 52 services are extraordinarily greater than in the vast  
 53 majority of counties, thus impairing the quality of  
 54 education in those few counties. The factors used to  
 55 determine eligibility for funds shall be sparsity of  
 56 student population, combined with geographical barriers  
 57 to the efficient transportation of students; or  
 58 extraordinary growth in net enrollment for school  
 59 year one thousand nine hundred ninety—ninety-one  
 60 which exceed the allowance for increased enrollment  
 61 appropriated in the budget for that year. Prior to the  
 62 distribution of funds, the state superintendent shall  
 63 establish that the applying county has demonstrated  
 64 efficiency and fiscal responsibility in staffing, and in  
 65 maximum sharing of services with adjoining counties  
 66 and the regional educational service agency for that  
 67 county in the use of the total local county budget.

**§18-9A-13b. Allowances for remedial and accelerated  
 education programs and salary equity.**

1 Commencing with the school year beginning on the  
 2 first day of July, one thousand nine hundred ninety-  
 3 one and thereafter, funds which accrue from allocations  
 4 due to changes in adjusted enrollment above that  
 5 computed for each preceding school year shall be  
 6 allocated in the following manner:

7 (1) Up to eighty percent of these funds shall be  
 8 allocated for the purpose of attaining salary equity  
 9 among the counties pursuant to section five, article  
 10 four, chapter eighteen-a, except that for the school  
 11 year commencing on the first day of July, one thou-

12 sand nine hundred ninety only, the allocation to salary  
13 equity shall be made in accordance with the provisions  
14 of section five-d, article four, chapter eighteen-a of this  
15 code;

16 (2) Twenty percent of these funds shall be allocated  
17 to implement remedial and accelerated programs as  
18 developed under guidelines of the state board, except  
19 that for the school year commencing on the first day  
20 of July, one thousand nine hundred ninety only, the  
21 allocation to implement remedial and accelerated  
22 programs shall be made only to the extent funds are  
23 appropriated for such programs; and

24 (3) The balance shall be distributed for the support  
25 of professional educator salaries in accordance with  
26 legislative appropriation.

**§18-9A-15. Allowance for increased enrollment.**

1 To provide for the support of increased net enroll-  
2 ments in the counties in a school year over the net  
3 enrollments used in the computation of total state aid  
4 for that year, there shall be appropriated for that  
5 purpose from the general revenue fund an amount  
6 equal to the average total state aid per net pupil  
7 multiplied by the total of all of the increases in the net  
8 enrollments of the counties made by comparing the  
9 most recent reports of net enrollment for the second  
10 school month to the immediately previous year's  
11 reports for the same school month.

12 Upon determination of the several increases in the  
13 respective counties' net enrollments, as of the close of  
14 the second school month, each county showing such  
15 increase shall be allocated an amount equal to that  
16 county's average per net pupil total state aid multi-  
17 plied by the increase in that county's net enrollment  
18 determined as provided heretofore. Such allocations  
19 shall be distributed not later than the thirty-first day  
20 of December of each year to the counties having  
21 increases in net enrollment as heretofore provided. If  
22 the amount appropriated for this purpose shall not be  
23 sufficient to provide payment in full for the total of  
24 these several allocations, each county allocation shall  
25 be reduced to an amount which is proportionate to the

26 appropriation compared to the total of the several  
27 allocations, and the allocations as thus adjusted shall  
28 be distributed to the counties as provided in this  
29 section: *Provided*, That the governor shall request a  
30 supplemental appropriation at the next legislative  
31 session for the reduced amount.

32 No provision of this section shall be construed to in  
33 any way affect the allocation of moneys for educa-  
34 tional purposes to a county under other provisions of  
35 law.

**ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN  
PROGRAM.**

**§18-22D-2. Definitions.**

1 The following words when used in this article have  
2 the meaning hereinafter ascribed to them, unless the  
3 context clearly indicates a different meaning:

4 (a) "Board" or "governing board" means the Uni-  
5 versity of West Virginia board of trustees or the board  
6 of directors of the state college system, whichever is  
7 applicable within the context referred to in this  
8 article, unless the context clearly indicates a different  
9 meaning.

10 (b) "Eligible lending institution" or "institution"  
11 means a financial institution that is eligible to make  
12 commercial loans, is a public depository of state funds  
13 and agrees to participate in the West Virginia higher  
14 education student assistance loan program.

15 (c) "Eligible student" means any individual who:

16 (1) Is a citizen or eligible noncitizen of the United  
17 States;

18 (2) Has been a resident of the state for at least one  
19 year immediately preceding the date of application for  
20 a West Virginia higher education student assistance  
21 loan;

22 (3) Is currently enrolled in good standing or accepted  
23 for enrollment at the approved institution of higher  
24 education in this state of the student's choice; and



25 (4) Is certified by such institution in accordance with  
26 section three of this article.

27 (d) "Linked deposit" means a certificate of deposit  
28 placed by the state board of investments with an  
29 eligible lending institution at three percent below  
30 current market rates, as determined and calculated by  
31 the state board of investments, provided the institution  
32 agrees to lend the value of such deposit, according to  
33 the deposit agreement provided for by this article, to  
34 eligible students at three percent below the present  
35 borrowing rate applicable to each such student at the  
36 time of the deposit of state funds in the institution.

37 (e) "Approved institution of higher education in this  
38 state" means nonprofit, degree-granting two-year and  
39 four-year colleges and universities located in West  
40 Virginia.

**§18-22D-4. Limitations on investment in linked deposits.**

1 The state board of investments shall invest in linked  
2 deposits as identified by the board through an  
3 approved application, provided that at the time of  
4 placement of the linked deposit, exclusive of the linked  
5 deposit program provided for in article one-a, chapter  
6 twelve of this code, not more than two percent of the  
7 state's total investment portfolio is so invested. The  
8 total amount initially deposited in any one year shall  
9 not exceed two million dollars, and the total amount so  
10 deposited at any one time shall not exceed, in the  
11 aggregate, twenty million dollars.

**§18-22D-5. Applications for loans; loan package.**

1 (a) An eligible lending institution that desires to  
2 receive a linked deposit shall accept and review  
3 applications for loans from applicants certified as  
4 eligible students. The lending institution shall apply all  
5 usual lending standards to determine the creditworth-  
6 iness of each eligible student. In no case shall the  
7 applicant request, nor the eligible lending institution  
8 approve, an annual loan amount in excess of the  
9 maximum amount indicated on the form certifying  
10 such applicant as an eligible student.

11 (b) An eligible student shall certify on the loan  
12 application that the reduced rate loan will be used  
13 exclusively to attend an approved institution of higher  
14 education in this state. Whoever knowingly makes a  
15 false statement concerning such application shall be  
16 prohibited from entering into the West Virginia higher  
17 education student assistance loan program. Whoever  
18 knowingly uses loan proceeds received pursuant to  
19 this article for reasons other than attendance at an  
20 approved institution of higher education shall be  
21 prohibited from benefitting from the linked deposit,  
22 which deposit shall be withdrawn upon maturity, and  
23 the loan shall revert to the rate of market interest  
24 originally determined.

25 (c) Upon approval of all or any portion of the loan  
26 amount requested for which a linked deposit is sought,  
27 the eligible lending institution shall forward to the  
28 board a linked deposit loan package, in such form and  
29 manner as shall be prescribed by the state board of  
30 investments in cooperation with the board. The  
31 package shall include such information as may be  
32 needed by the board or the state board of investments  
33 including the certification form and the amount of the  
34 loan requested by the eligible student. The eligible  
35 lending institution shall certify, for each eligible  
36 student, the present borrowing rate applicable to such  
37 student.

**§18-22D-6. Acceptance or rejection of loan package; deposit  
agreement.**

1 (a) The board may approve or reject a linked deposit  
2 loan package. Upon approval by the board of the  
3 linked deposit loan package, the board shall forward  
4 such approved application to the state board of invest-  
5 ments and the state board of investments shall place  
6 certificates of deposit, within the limitations provided  
7 for in section four of this article, with the eligible  
8 lending institution at three percent below current  
9 market rates, as determined and calculated by the  
10 state board of investments.

11 (b) The eligible lending institution shall enter into a

12 deposit agreement with the state board of investments,  
13 which shall include requirements necessary to carry  
14 out the purposes of this article. Such requirements  
15 shall reflect the market conditions prevailing in the  
16 eligible lending institution's lending area. The agree-  
17 ment may include a specification of the period of time  
18 in which the eligible lending institution is to lend  
19 funds after the placement of a linked deposit and shall  
20 include provisions for the certificates of deposit to be  
21 placed for up to two-year maturities that may be  
22 renewed for period up to two years until such time as  
23 the loan has been completely repaid, or ten and one-  
24 half years after the eligible student's cessation of  
25 enrollment in the approved institution of higher  
26 education to which the loan proceeds were paid,  
27 whichever is sooner. Interest shall be paid at the times  
28 determined by the state board of investments.

**§18-22D-8. Certification and monitoring of compliance;  
reports.**

1 (a) A certification of compliance with any applicable  
2 provisions of this article, in such form and manner as  
3 shall be prescribed by the state board of investments  
4 in cooperation with the board, shall be required of the  
5 eligible lending institution.

6 The senior administrator jointly employed by the  
7 West Virginia board of trustees and the board of  
8 directors of the state college system, in cooperation  
9 with the state board of investments, shall monitor  
10 compliance by the eligible student with the applicable  
11 provisions of this article and may take whatever action  
12 may be deemed necessary in furthering the intent of  
13 the student loan program.

14 (b) By the first day of January, April, July and  
15 October of each year, the board of investments shall  
16 report on the linked deposit program for the preceding  
17 calendar quarter to the governor, the joint committee  
18 on government and finance, and the board. The  
19 reports shall set forth the linked deposits made by the  
20 state board of investments under the program during  
21 the quarter and shall include information regarding

22 the nature, terms and amounts of the loans upon  
 23 which the linked deposits were based and the eligible  
 24 students to which the loans were made.

**§18-22D-9. Liability.**

1 The state, the governing boards and the state board  
 2 of investments are not liable to any eligible lending  
 3 institution in any manner for payment of the principal  
 4 or interest on the loan to an eligible student. Any  
 5 delay in payment or default on the part of an eligible  
 6 student does not in any manner affect the deposit  
 7 agreement between the eligible lending institution and  
 8 the state board of investments.

**ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST  
 ACT.**

**§18-30-5. Appointment of board of directors; terms; compen-  
 sation; proceedings generally.**

1 (a) The board of directors shall consist of the  
 2 secretary of education and the arts, who shall be the  
 3 chairman of the board, the executive secretary of the  
 4 state board of investments, and the state superinten-  
 5 dent of schools, who shall serve as ex officio voting  
 6 members of the board, and six other members with  
 7 knowledge, skill and experience in an academic,  
 8 business or financial field, who shall be residents of  
 9 the state appointed by the governor, by and with the  
 10 advice and consent of the senate. Of the six appointed  
 11 members, four shall be appointed from nominations as  
 12 follows: One shall be a private citizen not employed by  
 13 or an officer of the state or any political subdivision  
 14 thereof appointed from one or more nominees of the  
 15 speaker of the house of delegates; one shall be a  
 16 private citizen not employed by or an officer of the  
 17 state or any political subdivision thereof appointed  
 18 from one or more nominees of the president of the  
 19 senate; one shall be a president of a state institution of  
 20 higher education who shall be appointed from one or  
 21 more nominees of the council of presidents of state  
 22 colleges and universities; and one shall represent the  
 23 interests of private institutions of higher education  
 24 located in this state who shall be appointed from one

25 or more nominees of the West Virginia association of  
26 private colleges. Of these six members first appointed,  
27 two shall be appointed for terms that expire on the  
28 thirty-first day of December, one thousand nine  
29 hundred eighty-nine, two shall be appointed for terms  
30 that expire on the thirty-first day of December, one  
31 thousand nine hundred ninety, and two shall be  
32 appointed for a term that expires on the thirty-first  
33 day of December, one thousand nine hundred ninety-  
34 one. Following the expiration of these fixed terms, a  
35 member shall be appointed for a term of three years.  
36 A member shall serve until a successor is appointed,  
37 and a vacancy shall be filled for the balance of the  
38 unexpired term in the same manner as the original  
39 appointment. The secretary of education and the arts,  
40 executive secretary of the state board of investments,  
41 state superintendent or president of a state institution  
42 of higher education may appoint a designee to serve as  
43 a voting member of the board in such person's absence.

44 (b) Members of the board shall serve without  
45 compensation, but shall receive reimbursement for  
46 reasonable and necessary expenses actually incurred  
47 in the performance of their duties as board members  
48 unless such member is otherwise reimbursed as an  
49 employee of the state.

50 (c) A majority of the voting members appointed to  
51 the board shall constitute a quorum for the transaction  
52 of business at a meeting of the board, or the exercise  
53 of a power or function of the trust, notwithstanding  
54 the existence of one or more vacancies. Voting upon  
55 action taken by the board shall be conducted by  
56 majority vote of the members present in person at a  
57 meeting of the board, and, if authorized by the bylaws  
58 of the board and when a quorum is present in person  
59 at the meeting, by use of amplified telephonic equip-  
60 ment. The board shall meet at the call of the chairman  
61 and as may be provided in its bylaws. Meetings of the  
62 board may be held anywhere within the state.

63 (d) The board is subject to the open governmental  
64 proceedings and freedom of information provisions of  
65 article nine-a, chapter six, and chapter twenty-nine-b,

66 respectively, of this code.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

#### §18A-4-1. Definitions.

1 For the purpose of this article, salaries shall be  
2 defined as: (a) "Basic salaries" which shall mean the  
3 salaries paid to teachers with zero years of experience  
4 and in accordance with the classification of certifica-  
5 tion and of training of said teachers; and (b) "advanced  
6 salaries" which shall mean the basic salary plus an  
7 experience increment based on the allowable years of  
8 experience of the respective teachers in accordance  
9 with the schedule established herein for the applicable  
10 classification of certification and of training of said  
11 teachers.

12 "Classification of certification" means the class or  
13 type of certificate issued by the state superintendent of  
14 schools under the statutory provisions of this chapter.  
15 "Classification of training" means the number of  
16 collegiate or graduate hours necessary to meet the  
17 requirements stipulated in the definitions set forth in  
18 the next paragraph in items (2) to (12), inclusive.

19 The column heads of the state minimum salary  
20 schedule set forth in section two of this article are  
21 defined as follows:

22 (1) "Years of experience" means the number of  
23 years the teacher has been employed in the teaching  
24 profession, including active work in educational  
25 positions other than the public schools, and service in  
26 the armed forces of the United States if the teacher  
27 was under contract to teach at the time of induction.  
28 For a registered professional nurse employed by a  
29 county board of education, "years of experience"  
30 means the number of years the nurse has been  
31 employed as a public school health nurse, including  
32 active work in a nursing position related to education,  
33 and service in the armed forces if the nurse was under  
34 contract with the county board at the time of induc-  
35 tion. For the purpose of section two of this article, the

36 experience of a teacher or a nurse shall be limited to  
37 that allowed under their training classification as  
38 found in the minimum salary schedule.

39 (2) "Fourth class" means all certificates previously  
40 identified as (a) "certificates secured by examination",  
41 and (b) "other first grade certificates".

42 (3) "Third class" means all certificates previously  
43 identified as (a) "standard normal certificates" and (b)  
44 "third class temporary (sixty-four semester hours)  
45 certificates".

46 (4) "Second class" means all certificates previously  
47 identified as "second class temporary certificates based  
48 upon the required ninety-six hours of college work".

49 (5) "A.B." means a bachelor's degree, from an  
50 accredited institution of higher education, which has  
51 been issued to, or for which the requirements for such  
52 have been met by, a person who qualifies for or holds  
53 a professional certificate or its equivalent. A registered  
54 professional nurse with a bachelor's degree, who is  
55 licensed by the West Virginia board of examiners for  
56 registered professional nurses and employed by a  
57 county board of education, shall be within this classi-  
58 fication for payment in accordance with sections two  
59 and two-a of this article.

60 (6) "A.B. plus 15" means a bachelor's degree as  
61 defined above plus fifteen hours of graduate work,  
62 from an accredited institution of higher education  
63 certified to do graduate work, in an approved planned  
64 program at the graduate level which requirements  
65 have been met by a person who qualifies for or holds  
66 a professional certificate or its equivalent.

67 (7) "M.A." means a master's degree, earned in an  
68 institution of higher education approved to do gradu-  
69 ate work, which has been issued to, or the require-  
70 ments for such have been met by, a person who  
71 qualifies for or holds a professional certificate or its  
72 equivalent.

73 (8) "M.A. plus 15" means the above-defined master's  
74 degree plus fifteen hours of graduate work, earned in

75 an institution of higher education approved to do  
76 graduate work, if the person is qualified for or holds  
77 a professional certificate or its equivalent.

78 (9) "M.A. plus 30" means the above-defined master's  
79 degree plus thirty graduate hours, earned in an  
80 institution approved to do graduate work, if the person  
81 is qualified for or holds a professional certificate or its  
82 equivalent.

83 (10) "Doctorate" means a doctor's degree, earned  
84 from a university qualified and approved to confer  
85 such a degree, which has been issued to or the  
86 requirements for such have been met by a person who  
87 qualifies for or holds a professional certificate or its  
88 equivalent.

89 Notwithstanding the requirements set forth in  
90 subdivisions (6), (8) and (9) of this section relating to  
91 hours of graduate work at an institution certified to do  
92 such work, fifteen undergraduate credit hours from a  
93 regionally accredited institution of higher education,  
94 earned after the effective date of this section, may be  
95 utilized for advanced salary classification if such hours  
96 are in accordance with (a) the teacher's current  
97 classification of certification and of training, (b) a  
98 designated instructional shortage area documented by  
99 the employing county superintendent, or (c) an iden-  
100 tified teaching deficiency documented through the  
101 state approved county personnel evaluation system.

102 In-field master's compensation is contingent upon  
103 recognition of the in-field master's classification and  
104 the educator's assignment. The West Virginia board of  
105 education shall establish regulations for the adminis-  
106 tration and implementation of the in-field master's  
107 salary schedule.

108 Only those professional educators who are assigned  
109 to teach, for a minimum of fifty (50) percent of the  
110 instructional day, subjects which are consistent with  
111 the endorsement(s) recognized as meeting the in-field  
112 master's classification shall be eligible for compensa-  
113 tion based on the in-field master's schedule. If sche-  
114 duling constraints prevent the educator from being



115 assigned to endorsements recognized for the in-field  
116 master's classification for a minimum of fifty (50)  
117 percent of the instructional day, the educator may  
118 petition the county board of education for such  
119 compensation. After review, the county board of  
120 education shall submit the petition to the state depart-  
121 ment of education on behalf of the educator for  
122 determination of in-field master's compensation. Such  
123 petitions must be filed on an annual basis.

124 If a professional educator, who was previously  
125 employed in an area recognized for in-field master's  
126 classification, is reassigned to work full-time in an area  
127 not recognized on said educator's certificate for in-  
128 field master's classification as a result of (1) voluntary  
129 reassignment to assist the county in meeting a critical  
130 staffing need or (2) a reduction in force, the educator  
131 may petition the county board of education for con-  
132 tinued payment under the in-field master's salary  
133 schedule. After review, the county board of education  
134 shall petition the state department of education on an  
135 annual basis to continue such payment. In no case  
136 shall approval be granted for more than three years.  
137 The county board of education must provide documen-  
138 tation to justify each request.

139 Upon request for a specific master's degree program,  
140 the appropriate governing board of higher education  
141 shall provide all of the course work for a master's  
142 degree program that is designated as in-field for the  
143 certification area of the professional educator who  
144 makes the request. The course work for such program  
145 shall be initiated no later than two years from the date  
146 requested and shall be provided to the greatest extent  
147 feasible within each regional educational service  
148 agency area in which the request has been made as  
149 follows: (1) Via satellite instruction; (2) via public  
150 television home instruction; or (3) in a manner pre-  
151 scribed by such governing board. If the governing  
152 board fails to initiate the course work within the above  
153 time period, an individual shall be compensated at the  
154 appropriate level of years of experience on the in-field  
155 master's salary schedule whenever the individual has

156 obtained any master's degree related to the public  
157 school program.

158 The appropriate governing board of higher educa-  
159 tion shall develop a plan to provide "MA" classifica-  
160 tion programs to professional educators throughout  
161 this state by the first day of January, one thousand  
162 nine hundred ninety-one, with the objective being to  
163 provide course work enabling professional educators to  
164 achieve an "MA" degree classification in their teach-  
165 ing field.

166 Effective the first day of July, one thousand nine  
167 hundred ninety-two, the following definitions shall be  
168 applicable and the preceding definitions numbered (8)  
169 and (9) shall be renumbered (9) and (11), respectively,  
170 and the preceding definition (10) shall be reconstituted  
171 in definition (12).

172 (8) "In-field master's" means the above-defined  
173 master's degree and one of the following:

174 (a) Twenty-four (24) semester hours of post bacca-  
175 laurate graduate credit, within or external to the  
176 advanced degree, confined to one specialization com-  
177 pleted at the undergraduate level on the educator's  
178 professional certificate or its equivalent, or

179 (b) A master's degree earned prior to the first day  
180 of July, one thousand nine hundred ninety-two, in (i)  
181 a program specialization completed at the undergrad-  
182 uate level, or (ii) a state approved sub-area of the  
183 specialization which is consistent with a specialization,  
184 completed at the undergraduate level, on the educa-  
185 tor's professional certificate or its equivalent, or

186 (c) Twelve (12) semester hours of graduate credit  
187 above and beyond the course work completed for the  
188 endorsement recognized for in-field master's classifica-  
189 tion only if the course work for the endorsement was  
190 also completed at the graduate level: *Provided*, That in  
191 certification areas where the total course work  
192 requirements for initial certification exceed the  
193 minimum required for in-field classification, the state  
194 department of education may by rule establish

195 exceptions.

196 (10) "In-field M.A. plus 15" means the above-defined  
197 M.A. plus 15 including recognition of an above-defined  
198 in-field master's, earned in an institution of higher  
199 education approved to do graduate work, if the person  
200 is qualified for or holds a professional certificate or its  
201 equivalent.

202 (12) "In-field M.A. plus 30" means the above-defined  
203 M.A. plus 30 including recognition of an above-defined  
204 in-field master's, earned in an institution of higher  
205 education approved to do graduate work, if the person  
206 is qualified for or holds a professional certificate or its  
207 equivalent, or "Doctorate" means a doctor's degree,  
208 earned from a university qualified and approved to  
209 confer such a degree, which has been issued to or the  
210 requirements for such have been met by a person who  
211 qualifies for or holds a professional certificate or its  
212 equivalent.

**§18A-4-2. State minimum salaries for teachers.**

1 Effective the first day of July, one thousand nine  
2 hundred ninety, through the thirtieth day of June, one  
3 thousand nine hundred ninety-one, each teacher shall  
4 receive the amount prescribed in the "1990-91 state  
5 minimum salary schedule" as set forth in this section,  
6 specific additional amounts prescribed in this section  
7 or article, and any county supplement in effect in a  
8 county pursuant to section five-a of this article during  
9 the contract year.

10 1990-91 STATE MINIMUM SALARY SCHEDULE

11 (1)	(2)	(3)	(4)	(5)	(6)	(7)
12 Years	4th	3rd	2nd		A.B.	
13 Exp.	Class	Class	Class	A.B.	+15	M.A.
14 0	13,816	14,453	14,708	15,918	16,653	17,388
15 1	14,032	14,669	14,924	16,318	17,053	17,788
16 2	14,248	14,886	15,141	16,718	17,453	18,188
17 3	14,465	15,102	15,357	17,118	17,853	18,588
18 4	14,917	15,554	15,810	17,754	18,489	19,224
19 5	15,133	15,771	16,026	18,154	18,889	19,624

20	6	15,350	15,987	16,242	18,554	19,289	20,024
21	7		16,203	16,459	18,954	19,689	20,424
22	8		16,420	16,675	19,354	20,089	20,824
23	9			16,891	19,754	20,489	21,224
24	10			17,107	20,155	20,890	21,625
25	11				20,555	21,290	22,025
26	12				20,955	21,690	22,425
27	13				21,355	22,090	22,825
28	14						23,225
29	15						23,625
30	16						24,025
31	17						
32	18						
33	19						
34					(8)	(9)	(10)
35	Years				M.A.	M.A.	Doc-
36	Exp.				+15	+30	torate
37	0				18,123	18,858	19,593
38	1				18,523	19,258	19,993
39	2				18,923	19,658	20,393
40	3				19,323	20,058	20,793
41	4				19,959	20,694	21,429
42	5				20,359	21,094	21,829
43	6				20,759	21,494	22,229
44	7				21,159	21,894	22,629
45	8				21,559	22,294	23,029
46	9				21,959	22,694	23,429
47	10				22,360	23,095	23,830
48	11				22,760	23,495	24,230
49	12				23,160	23,895	24,630
50	13				23,560	24,295	25,030
51	14				23,960	24,695	25,430
52	15				24,360	25,095	25,830
53	16				24,760	25,495	26,230
54	17					25,895	26,630
55	18					26,295	27,030
56	19					26,695	27,430

57 Six hundred dollars shall be paid annually to each  
58 classroom teacher who has at least twenty years of  
59 teaching experience. Such payments shall be in  
60 addition to any amounts prescribed in the "1990-91

61 state minimum salary schedule'', shall be paid in  
62 equal monthly installments, and shall be deemed a  
63 part of the state minimum salaries for teachers.

64 Effective the first day of July, one thousand nine  
65 hundred ninety-one through the thirtieth day of June,  
66 one thousand nine hundred ninety-two, each teacher  
67 shall receive the amount prescribed in the "1991-92  
68 state minimum salary schedule'' as set forth in this  
69 section, specific additional amounts prescribed in this  
70 section or article, and any county supplement in effect  
71 in a county pursuant to section five-a of this article  
72 during the contract year.

73 1991-92 STATE MINIMUM SALARY SCHEDULE

74	(1)	(2)	(3)	(4)	(5)	(6)	(7)
75	Years	4th	3rd	2nd		A.B.	
76	Exp.	Class	Class	Class	A.B.	+15	M.A.
77	0	14,816	15,453	15,708	16,918	17,653	18,388
78	1	15,032	15,669	15,924	17,318	18,053	18,788
79	2	15,248	15,886	16,141	17,718	18,453	19,188
80	3	15,465	16,102	16,357	18,118	18,853	19,588
81	4	15,917	16,554	16,810	18,754	19,489	20,224
82	5	16,133	16,771	17,026	19,154	19,889	20,624
83	6	16,350	16,987	17,242	19,554	20,289	21,024
84	7		17,203	17,459	19,954	20,689	21,424
85	8		17,420	17,675	20,354	21,089	21,824
86	9			17,891	20,754	21,489	22,224
87	10			18,107	21,155	21,890	22,625
88	11				21,555	22,290	23,025
89	12				21,955	22,690	23,425
90	13				22,355	23,090	23,825
91	14						24,225
92	15						24,625
93	16						25,025
94	17						
95	18						
96	19						
97					(8)	(9)	(10)
98	Years				M.A.	M.A.	Doc-
99	Exp.				+15	+30	torate

100	0	19,123	19,858	20,593
101	1	19,523	20,258	20,993
102	2	19,923	20,658	21,393
103	3	20,323	21,058	21,793
104	4	20,959	21,694	22,429
105	5	21,359	22,094	22,829
106	6	21,759	22,494	23,229
107	7	22,159	22,894	23,629
108	8	22,559	23,294	24,029
109	9	22,959	23,694	24,429
110	10	23,360	24,095	24,830
111	11	23,760	24,495	25,230
112	12	24,160	24,895	25,630
113	13	24,560	25,295	26,030
114	14	24,960	25,695	26,430
115	15	25,360	26,095	26,830
116	16	25,760	26,495	27,230
117	17		26,895	27,630
118	18		27,295	28,030
119	19		27,695	28,430

120 Six hundred dollars shall be paid annually to each  
 121 classroom teacher who has at least twenty years of  
 122 teaching experience. Such payments shall be in  
 123 addition to any amounts prescribed in the "1991-92  
 124 state minimum salary schedule", shall be paid in  
 125 equal monthly installments, and shall be deemed a  
 126 part of the state minimum salaries for teachers.

127 On and after the first day of July, one thousand nine  
 128 hundred ninety-two, each teacher who has met the in-  
 129 field master's requirements set forth in section one of  
 130 this article shall receive the amount prescribed in  
 131 either column (8), (10), or (12) to which they are  
 132 entitled in lieu of column (7), (9), or (11).

133 Effective the first day of July, one thousand nine  
 134 hundred ninety-two and thereafter, each teacher shall  
 135 receive the amount prescribed in the "1992-93 state  
 136 minimum salary schedule" as set forth in this section,  
 137 specific additional amounts prescribed in this section  
 138 or article, and any county supplement in effect in a  
 139 county pursuant to section five-a of this article during  
 140 the contract year.

## 141 1992-93 STATE MINIMUM SALARY SCHEDULE

142	(1)	(2)	(3)	(4)	(5)	(6)	(7)
143	Years	4th	3rd	2nd		A.B.	
144	Exp.	Class	Class	Class	A.B.	+15	M.A.
145	0	16,816	17,453	17,708	18,918	19,653	20,388
146	1	17,032	17,669	17,924	19,318	20,053	20,788
147	2	17,248	17,886	18,141	19,718	20,453	21,188
148	3	17,465	18,102	18,357	20,118	20,853	21,588
149	4	17,917	18,554	18,810	20,754	21,489	22,224
150	5	18,133	18,771	19,026	21,154	21,889	22,624
151	6	18,350	18,987	19,242	21,554	22,289	23,024
152	7		19,203	19,459	21,954	22,689	23,424
153	8		19,420	19,675	22,354	23,089	23,824
154	9			19,891	22,754	23,489	24,224
155	10			20,107	23,155	23,890	24,625
156	11				23,555	24,290	25,025
157	12				23,955	24,690	25,425
158	13				24,355	25,090	25,825
159	14						26,225
160	15						26,625
161	16						27,025
162	17						
163	18						
164	19						
165							(12)
166							In-field
167			(8)	(9)	(10)	(11)	M.A.+30
168	Years		In-field	M.A.	In-field	M.A.	or
169	Exp.		M.A.	+15	M.A.+15	+30	Doc-
170							torate
171	0		21,388	21,123	22,123	21,858	22,858
172	1		21,788	21,523	22,523	22,258	23,258
173	2		22,188	21,923	22,923	22,658	23,658
174	3		22,588	22,323	23,323	23,058	24,058
175	4		23,224	22,959	23,959	23,694	24,694
176	5		23,624	23,359	24,359	24,094	25,094
177	6		24,024	23,759	24,759	24,494	25,494
178	7		24,424	24,159	25,159	24,894	25,894
179	8		24,824	24,559	25,559	25,294	26,294
180	9		25,224	24,959	25,959	25,694	26,694
181	10		25,625	25,360	26,360	26,095	27,095

182	11	26,025	25,760	26,760	26,495	27,495
183	12	26,425	26,160	27,160	26,895	27,895
184	13	26,825	26,560	27,560	27,295	28,295
185	14	27,225	26,960	27,960	27,695	28,695
186	15	27,625	27,360	28,360	28,095	29,095
187	16	28,025	27,760	28,760	28,495	29,495
188	17				28,895	29,895
189	18				29,295	30,295
190	19				29,695	30,695

191 Six hundred dollars shall be paid annually to each  
 192 classroom teacher who has at least twenty years of  
 193 teaching experience. Such payments shall be in  
 194 addition to any amounts prescribed in the "1992-93  
 195 state minimum salary schedule", shall be paid in  
 196 equal monthly installments, and shall be deemed a  
 197 part of the state minimum salaries for teachers.

**§18A-4-5. Salary equity among the counties; state salary supplement.**

1 (a) For the purposes of this section, salary equity  
 2 among the counties means that the salary potential of  
 3 school employees employed by the various districts  
 4 throughout the state does not differ by greater than  
 5 ten percent between those offering the highest salaries  
 6 and those offering the lowest salaries. In the case of  
 7 professional educators, such difference shall be calcu-  
 8 lated utilizing the average of the professional educator  
 9 salary schedules, degree classifications B.A. through  
 10 Doctorate and years of experience zero through  
 11 twenty, in effect in the five counties offering the  
 12 highest salary schedules compared to the lowest such  
 13 salary schedule in effect among the fifty-five counties.  
 14 In the case of school service personnel, such difference  
 15 shall be calculated utilizing the average of the school  
 16 service personnel salary schedules, pay grades "A"  
 17 through "H" and years of experience zero through  
 18 thirty, in effect in the five counties offering the  
 19 highest such salary schedules compared to the lowest  
 20 such salary schedule in effect among the fifty-five  
 21 counties.

22 (b) To assist the state in meeting its objective of  
 23 salary equity among the counties, as defined in



24 subsection (a) of this section, on and after the first day  
25 of July, one thousand nine hundred eighty-four,  
26 subject to available state appropriations and the  
27 conditions set forth herein, each teacher and school  
28 service personnel shall receive a supplemental amount  
29 in addition to the amount from the state minimum  
30 salary schedules provided for in this article.

31 State funds for this purpose shall be paid within the  
32 West Virginia public school support plan in accordance  
33 with article nine-a, chapter eighteen of this code. The  
34 amount allocated for salary equity shall be apporti-  
35 oned between teachers and school service personnel in  
36 direct proportion to that amount necessary to support  
37 the professional salaries and service personnel salaries  
38 statewide under sections four and five, article nine-a,  
39 chapter eighteen of this code: *Provided*, That in  
40 making such division an adequate amount of state  
41 equity funds shall be reserved to finance the appropri-  
42 ate foundation allowances and staffing incentives  
43 provided for in said article nine-a.

44 Pursuant to this section, each teacher and school  
45 service personnel shall receive the amount that is the  
46 difference between their authorized state minimum  
47 salary and ninety-five percent of the maximum salary  
48 schedules prescribed in sections five-a and five-b of  
49 this article, reduced by any amount provided by the  
50 county as a salary supplement for teachers and school  
51 service personnel on the first day of January of the  
52 fiscal year immediately preceding that in which the  
53 salary equity appropriation is distributed: *Provided*,  
54 That no amount received pursuant to this section shall  
55 be decreased as a result of any county supplement  
56 increase instituted after the first day of January, one  
57 thousand nine hundred eighty-four, unless and until  
58 the objective of salary equity is reached: *Provided*,  
59 *however*, That any amount received pursuant to this  
60 section may be reduced proportionately based upon  
61 the amount of funds appropriated for this purpose.

62 No county may reduce any salary supplement that  
63 was in effect on the first day of January, one thousand  
64 nine hundred eighty-four, except as permitted by

65 sections five-a and five-b of this article.

**§18A-4-5a. County salary supplements for teachers.**

1 County boards of education in fixing the salaries of  
2 teachers shall use at least the state minimum salaries  
3 established under the provisions of this article. The  
4 board may establish salary schedules which shall be in  
5 excess of the state minimums fixed by this article,  
6 such county schedules to be uniform throughout the  
7 county as to the classification of training, experience,  
8 responsibility and other requirements.

9 Counties may fix higher salaries for teachers placed  
10 in special instructional assignments, for those assigned  
11 to or employed for duties other than regular instruc-  
12 tional duties, and for teachers of one-teacher schools,  
13 and they may provide additional compensation for any  
14 teacher assigned duties in addition to the teacher's  
15 regular instructional duties wherein such noninstruc-  
16 tional duties are not a part of the scheduled hours of  
17 the regular school day. Uniformity also shall apply to  
18 such additional salary increments or compensation for  
19 all persons performing like assignments and duties  
20 within the county: *Provided*, That in establishing such  
21 local salary schedules, no county shall reduce local  
22 funds allocated for salaries in effect on the first day of  
23 January, one thousand nine hundred ninety, and used  
24 in supplementing the state minimum salaries as  
25 provided for in this article, unless forced to do so by  
26 defeat of a special levy, or a loss in assessed values or  
27 events over which it has no control and for which the  
28 county board has received approval from the state  
29 board prior to making such reduction.

30 Counties may provide, in a uniform manner, benef-  
31 its for teachers which require an appropriation from  
32 local funds including, but not limited to, dental,  
33 optical, health and income protection insurance,  
34 vacation time and retirement plans excluding the state  
35 teachers retirement system. Nothing herein shall  
36 prohibit the maintenance nor result in the reduction  
37 of any benefits in effect on January one, one thousand  
38 nine hundred eighty-four, by any county board of

39 education.

**§18A-4-5b. County salary supplements for school service personnel.**

1 The county board of education may establish salary  
2 schedules which shall be in excess of the state min-  
3 imums fixed by this article.

4 These county schedules shall be uniform throughout  
5 the county with regard to any training classification,  
6 experience, years of employment, responsibility,  
7 duties, pupil participation, pupil enrollment, size of  
8 buildings, operation of equipment or other require-  
9 ments. Further, uniformity shall apply to all salaries,  
10 rates of pay, benefits, increments or compensation for  
11 all persons regularly employed and performing like  
12 assignments and duties within the county: *Provided*,  
13 That in establishing such local salary schedules, no  
14 county shall reduce local funds allocated for salaries in  
15 effect on the first day of January, one thousand nine  
16 hundred ninety, and used in supplementing the state  
17 minimum salaries as provided for in this article,  
18 unless forced to do so by defeat of a special levy, or a  
19 loss in assessed values or events over which it has no  
20 control and for which the county board has received  
21 approval from the state board prior to making such  
22 reduction.

23 Counties may provide, in a uniform manner, benef-  
24 its for service personnel which require an appropri-  
25 ation from local funds including, but not limited to,  
26 dental, optical, health and income protection insur-  
27 ance, vacation time and retirement plans excluding  
28 the state teachers' retirement system. Nothing herein  
29 shall prohibit the maintenance nor result in the  
30 reduction of any benefits in effect on January one, one  
31 thousand nine hundred eighty-four, by any county  
32 board of education.

**§18A-4-5d. 1990 appropriation for salary equity.**

1 Notwithstanding any other provisions of this code to  
2 the contrary, for the fiscal year beginning on the first  
3 day of July, one thousand nine hundred ninety only,

4 not less than twenty-seven million four hundred  
 5 thousand dollars shall be appropriated and expended  
 6 for salary equity among the counties in addition to  
 7 such amounts as were expended for such purpose  
 8 prior to the effective date of this section: *Provided*,  
 9 That for professional educators each person shall  
 10 receive a minimum salary equity adjustment of five  
 11 hundred thirty-five dollars per year and that for  
 12 service personnel each person shall receive a mini-  
 13 mum salary equity adjustment of twenty dollars per  
 14 month: *Provided, however*, That beginning on the first  
 15 day of July, one thousand nine hundred ninety, such  
 16 minimum salary equity adjustments shall be paid  
 17 through the appropriate salary schedules pursuant to  
 18 sections two and eight-a of this article: *Provided*  
 19 *further*, That the remainder of the equity money shall  
 20 be distributed as directed in section five of this article:  
 21 *And provided further*, That an adequate amount of  
 22 such funds shall be reserved to finance the appropriate  
 23 foundation allowances for fixed charges as provided  
 24 for in section six, article nine-a, chapter eighteen of  
 25 this code: *And provided further*, That notwithstanding  
 26 the provisions of said sections five and five-c of this  
 27 article, foundation allowances other than for fixed  
 28 charges shall not be financed from such funds.

**§18A-4-8. Employment term and class titles of service  
 personnel; definitions.**

1 The purpose of this section is to establish an employ-  
 2 ment term and class titles for service personnel. The  
 3 employment term for service personnel shall be no  
 4 less than ten months, a month being defined as twenty  
 5 employment days: *Provided*, That the county board of  
 6 education may contract with all or part of these  
 7 personnel for a longer term. The beginning and closing  
 8 dates of the ten-month employment term shall not  
 9 exceed forty-three weeks. Service personnel employed  
 10 on a yearly or twelve-month basis may be employed  
 11 by calendar months. Whenever there is a change in  
 12 job assignment during the school year, the minimum  
 13 pay scale and any county supplement shall be  
 14 applicable.

15 Service personnel employed in the same classifica-  
16 tion for more than the two hundred day minimum  
17 employment term shall be paid for additional employ-  
18 ment at a daily rate of not less than the daily rate paid  
19 for the two hundred day minimum employment term.

20 No service employee, without his agreement, shall  
21 be required to report for work more than five days per  
22 week and no part of any working day may be accum-  
23 ulated by the employer for future work assignments,  
24 unless the employee agrees thereto.

25 Should an employee whose regular work week is  
26 scheduled from Monday through Friday agree to  
27 perform any work assignments on a Saturday or  
28 Sunday, the employee shall be paid for at least one-  
29 half day of work for each such day he reports for  
30 work, and if the employee works more than three and  
31 one-half hours on any Saturday or Sunday, he shall be  
32 paid for a least a full day of work for each such day.

33 Custodians required to work a daily work schedule  
34 that is interrupted, that is, who do not work a contin-  
35 uous period in one day, shall be paid additional  
36 compensation which shall be equal to at least one  
37 eighth of their total salary as provided by their state  
38 minimum salary and any county pay supplement, and  
39 payable entirely from county funds.

40 Upon the change in classification or upon meeting  
41 the requirements of an advanced classification of or by  
42 any employee, his salary shall be made to comply with  
43 the requirements of this article, and to any county  
44 salary schedule in excess of the minimum require-  
45 ments of this article, based upon his advanced classi-  
46 fication and allowable years of employment.

47 An employee's contract as provided in section five,  
48 article two of this chapter shall state the appropriate  
49 monthly salary the employee is to be paid, based on  
50 the class title as provided in this article and any  
51 county salary schedule in excess of the minimum  
52 requirements of this article.

53 The column heads of the state minimum pay scale

54 and class titles, set forth in section eight-a of this  
55 article, are defined as follows:

56 “Pay grade” means the monthly salary applicable to  
57 class titles of service personnel.

58 “Years of employment” means the number of years  
59 which an employee classified as service personnel has  
60 been employed by a board of education in any position  
61 prior to or subsequent to the effective date of this  
62 section and including service in the armed forces of  
63 the United States if the employee were employed at  
64 the time of his induction. For the purpose of section  
65 eight-a of this article, years of employment shall be  
66 limited to the number of years shown and allowed  
67 under the state minimum pay scale as set forth in  
68 section eight-a of this article.

69 “Class title” means the name of the position or job  
70 held by service personnel.

71 “Accountant I” means personnel employed to main-  
72 tain payroll records and reports and perform one or  
73 more operations relating to a phase of the total payroll.

74 “Accountant II” means personnel employed to  
75 maintain accounting records and to be responsible for  
76 the accounting process associated with billing, budgets,  
77 purchasing and related operations.

78 “Accountant III” means personnel who are  
79 employed in the county board of education office to  
80 manage and supervise accounts payable and/or payroll  
81 procedures.

82 “Aide I” means those personnel selected and trained  
83 for teacher-aide classifications such as monitor aide,  
84 clerical aide, classroom aide or general aide.

85 “Aide II” means those personnel referred to in the  
86 “Aide I” classification who have completed a training  
87 program approved by the state board of education, or  
88 who hold a high school diploma or have received a  
89 general educational development certificate. Only  
90 personnel classified in an Aide II class title shall be  
91 employed as an aide in any special education program.

92 "Aide III" means those personnel referred to in the  
93 "Aide I" classification who hold a high school diploma  
94 or a general educational development certificate, and  
95 have completed six semester hours of college credit at  
96 an institution of higher education or are employed as  
97 an aide in a special education program and have one  
98 year's experience as an aide in special education.

99 "Aide IV" means personnel referred to in the "Aide  
100 I" classification who hold a high school diploma or a  
101 general educational development certificate and who  
102 have completed eighteen hours of state board-  
103 approved college credit at a regionally accredited  
104 institution of higher education, or who have completed  
105 fifteen hours of state board-approved college credit at  
106 a regionally accredited institution of higher education  
107 and successfully completed an in-service training  
108 program determined by the state board to be the  
109 equivalent of three hours of college credit.

110 "Audiovisual technician" means personnel  
111 employed to perform minor maintenance on audiovi-  
112 sual equipment, films, supplies and the filling of  
113 requests for equipment.

114 "Auditor" means personnel employed to examine  
115 and verify accounts of individual schools and to assist  
116 schools and school personnel in maintaining complete  
117 and accurate records of their accounts.

118 "Braille or sign language specialist" means person-  
119 nel employed to provide braille and/or sign language  
120 assistance to students.

121 "Bus operator" means personnel employed to oper-  
122 ate school buses and other school transportation  
123 vehicles as provided by the state board of education.

124 "Buyer" means personnel employed to review and  
125 write specifications, negotiate purchase bids and  
126 recommend purchase agreements for materials and  
127 services that meet predetermined specifications at the  
128 lowest available costs.

129 "Cabinetmaker" means personnel employed to  
130 construct cabinets, tables, bookcases and other

131 furniture.

132 "Cafeteria manager" means personnel employed to  
133 direct the operation of a food services program in a  
134 school, including assigning duties to employees,  
135 approving requisitions for supplies and repairs, keep-  
136 ing inventories, inspecting areas to maintain high  
137 standards of sanitation, preparing financial reports and  
138 keeping records pertinent to food services of a school.

139 "Carpenter I" means personnel classified as a  
140 carpenter's helper.

141 "Carpenter II" means personnel classified as a  
142 journeyman carpenter.

143 "Chief mechanic" means personnel employed to be  
144 responsible for directing activities which ensure that  
145 student transportation or other board-owned vehicles  
146 are properly and safely maintained.

147 "Clerk I" means personnel employed to perform  
148 clerical tasks.

149 "Clerk II" means personnel employed to perform  
150 general clerical tasks, prepare reports and tabulations  
151 and operate office machines.

152 "Computer operator" means qualified personnel  
153 employed to operate computers.

154 "Cook I" means personnel employed as a cook's  
155 helper.

156 "Cook II" means personnel employed to interpret  
157 menus, to prepare and serve meals in a food service  
158 program of a school and shall include personnel who  
159 have been employed as a "Cook I" for a period of four  
160 years, if such personnel have not been elevated to this  
161 classification within that period of time.

162 "Cook III" means personnel employed to prepare  
163 and serve meals, make reports, prepare requisitions  
164 for supplies, order equipment and repairs for a food  
165 service program of a school system.

166 "Crew leader" means personnel employed to orga-  
167 nize the work for a crew of maintenance employees to



168 carry out assigned projects.

169 "Custodian I" means personnel employed to keep  
170 buildings clean and free of refuse.

171 "Custodian II" means personnel employed as a  
172 watchman or groundsman.

173 "Custodian III" means personnel employed to keep  
174 buildings clean and free of refuse, to operate the  
175 heating or cooling systems and to make minor repairs.

176 "Custodian IV" means personnel employed as head  
177 custodians. In addition to providing services as defined  
178 in "Custodian III", their duties may include supervis-  
179 ing other custodian personnel.

180 "Director or coordinator of services" means person-  
181 nel not defined as professional personnel or profes-  
182 sional educators in section one, article one of this  
183 chapter, who are assigned to direct a department or  
184 division.

185 "Draftsman" means personnel employed to plan,  
186 design and produce detailed architectural/engineering  
187 drawings.

188 "Electrician I" means personnel employed as an  
189 apprentice electrician helper or who holds an electri-  
190 cian helper license issued by the state fire marshal.

191 "Electrician II" means personnel employed as an  
192 electrician journeyman or who holds a journeyman  
193 electrician license issued by the state fire marshal.

194 "Electronic technician I" means personnel employed  
195 at the apprentice level to repair and maintain elec-  
196 tronic equipment.

197 "Electronic technician II" means personnel  
198 employed at the journeyman level to repair and  
199 maintain electronic equipment.

200 "Executive secretary" means personnel employed as  
201 the county school superintendent's secretary or as a  
202 secretary who is assigned to a position characterized  
203 by significant administrative duties.

204 “Food services supervisor” means qualified person-  
 205 nel not defined as professional personnel or profes-  
 206 sional educators in section one, article one of this  
 207 chapter, employed to manage and supervise a county  
 208 school system’s food service program. The duties  
 209 would include preparing in-service training programs  
 210 for cooks and food service employees, instructing  
 211 personnel in the areas of quantity cooking with  
 212 economy and efficiency, and keeping aggregate records  
 213 and reports.

214 “Foremen” means skilled persons employed for  
 215 supervision of personnel who work in the areas of  
 216 repair and maintenance of school property and  
 217 equipment.

218 “General maintenance” means personnel employed  
 219 as helpers to skilled maintenance employees and to  
 220 perform minor repairs to equipment and buildings of  
 221 a county school system.

222 “Glazier” means personnel employed to replace  
 223 glass or other materials in windows and doors and to  
 224 do minor carpentry tasks.

225 “Graphic artist” means personnel employed to  
 226 prepare graphic illustrations.

227 “Groundsmen” means personnel employed to per-  
 228 form duties that relate to the appearance, repair and  
 229 general care of school grounds in a county school  
 230 system. Additional assignments may include the  
 231 operation of a small heating plant and routine cleaning  
 232 duties in buildings.

233 “Handyman” means personnel employed to perform  
 234 routine manual tasks in any operation of the county  
 235 school system.

236 “Heating and air conditioning mechanic I” means  
 237 personnel employed at the apprentice level to install,  
 238 repair and maintain heating and air conditioning  
 239 plants and related electrical equipment.

240 “Heating and air conditioning mechanic II” means  
 241 personnel employed at the journeyman level to install,

242 repair and maintain heating and air conditioning  
243 plants and related electrical equipment.

244 "Heavy equipment operator" means personnel  
245 employed to operate heavy equipment.

246 "Inventory supervisor" means personnel who are  
247 employed to supervise or maintain operations in the  
248 receipt, storage, inventory and issuance of materials  
249 and supplies.

250 "Key punch operator" means qualified personnel  
251 employed to operate key punch machines or verifying  
252 machines.

253 "Locksmith" means personnel employed to repair  
254 and maintain locks and safes.

255 "Lubrication man" means personnel employed to  
256 lubricate and service gasoline or diesel-powered  
257 equipment of a county school system.

258 "Machinist" means personnel employed to perform  
259 machinist tasks which include the ability to operate a  
260 lathe, planer, shaper, threading machine and wheel  
261 press. Such personnel should also have ability to work  
262 from blueprints and drawings.

263 "Mail clerk" means personnel employed to receive,  
264 sort, dispatch, deliver or otherwise handle letters,  
265 parcels and other mail.

266 "Maintenance clerk" means personnel employed to  
267 maintain and control a stocking facility to keep  
268 adequate tools and supplies on hand for daily with-  
269 drawal for all school maintenance crafts.

270 "Mason" means personnel employed to perform  
271 tasks connected with brick and block laying and  
272 carpentry tasks related to such laying.

273 "Mechanic" means personnel employed who can  
274 independently perform skilled duties in the mainte-  
275 nance and repair of automobiles, school buses and  
276 other mechanical and mobile equipment to use in a  
277 county school system.

278 "Mechanic assistant" means personnel employed as

279 a mechanic apprentice and helper.

280 "Multi-classification" means personnel employed to  
281 perform tasks that involve the combination of two or  
282 more class titles in this section or as created by the  
283 West Virginia board of education. In such instances  
284 the minimum salary scale shall be the higher pay  
285 grade of the class titles involved.

286 "Office equipment repairman I" means personnel  
287 employed as an office equipment repairman appren-  
288 tice or helper.

289 "Office equipment repairman II" means personnel  
290 responsible for servicing and repairing all office  
291 machines and equipment. Personnel shall be responsi-  
292 ble for parts being purchased necessary for the proper  
293 operation of a program of continuous maintenance and  
294 repair.

295 "Painter" means personnel employed to perform  
296 duties of painting, finishing and decorating of wood,  
297 metal and concrete surfaces of buildings, other struc-  
298 tures, equipment, machinery and furnishings of a  
299 county school system.

300 "Paraprofessional" means a person certified pursu-  
301 ant to section two-a, article three of this chapter to  
302 perform duties in a support capacity including but not  
303 limited to facilitating in the instruction and direct or  
304 indirect supervision of pupils under the direction of a  
305 principal, a teacher, or another designated professional  
306 educator: *Provided*, That no person employed on the  
307 effective date of this section in the position of an aide  
308 may be reduced in force or transferred to create a  
309 vacancy for the employment of a paraprofessional.

310 "Plumber I" means personnel employed as an  
311 apprentice plumber and helper.

312 "Plumber II" means personnel employed as a  
313 journeyman plumber.

314 "Printing operator" means personnel employed to  
315 operate duplication equipment, and as required, to cut,  
316 collate, staple, bind and shelve materials.

317 "Printing supervisor" means personnel employed to  
318 supervise the operation of a print shop.

319 "Programmer" means personnel employed to design  
320 and prepare programs for computer operation.

321 "Roofing/sheet metal mechanic" means personnel  
322 employed to install, repair, fabricate and maintain  
323 roofs, gutters, flashing and duct work for heating and  
324 ventilation.

325 "Sanitation plant operator" means personnel  
326 employed to operate and maintain a water or sewage  
327 treatment plant to ensure the safety of the plant's  
328 effluent for human consumption or environmental  
329 protection.

330 "School bus supervisor" means qualified personnel  
331 employed to assist in selecting school bus operators  
332 and routing and scheduling of school buses, operate a  
333 bus when needed, relay instructions to bus operators,  
334 plan emergency routing of buses and promoting good  
335 relationships with parents, pupils, bus operators and  
336 other employees.

337 "Secretary I" means personnel employed to tran-  
338 scribe from notes or mechanical equipment, receive  
339 callers, perform clerical tasks, prepare reports and  
340 operate office machines.

341 "Secretary II" means personnel employed in any  
342 elementary, secondary, kindergarten, nursery, special  
343 education, vocational or any other school as a secre-  
344 tary. The duties may include performing general  
345 clerical tasks, transcribing from notes or stenotype or  
346 mechanical equipment or a sound-producing machine,  
347 preparing reports, receiving callers and referring them  
348 to proper persons, operating office machines, keeping  
349 records and handling routine correspondence. There is  
350 nothing implied herein that would prevent such  
351 employees from holding or being elevated to a higher  
352 classification.

353 "Secretary III" means personnel assigned to the  
354 county board of education office administrators in  
355 charge of various instructional, maintenance, transpor-

356 tation, food services, operations and health depart-  
 357 ments, federal programs or departments with particu-  
 358 lar responsibilities of purchasing and financial control  
 359 or any personnel who have served in a position which  
 360 meets the definition of "secretary II" or "secretary  
 361 III" herein for twelve years.

362 "Supervisor of maintenance" means skilled person-  
 363 nel not defined as professional personnel or profes-  
 364 sional educators as in section one, article one of this  
 365 chapter. The responsibilities would include directing  
 366 the upkeep of buildings and shops, issuing instructions  
 367 to subordinates relating to cleaning, repairs and  
 368 maintenance of all structures and mechanical and  
 369 electrical equipment of a board of education.

370 "Supervisor of transportation" means qualified  
 371 personnel employed to direct school transportation  
 372 activities, properly and safely, and to supervise the  
 373 maintenance and repair of vehicles, buses, and other  
 374 mechanical and mobile equipment used by the county  
 375 school system.

376 "Switchboard operator-receptionist" means person-  
 377 nel employed to refer incoming calls, to assume  
 378 contact with the public, to direct and to give instruc-  
 379 tions as necessary, to operate switchboard equipment  
 380 and to provide clerical assistance.

381 "Truck driver" means personnel employed to oper-  
 382 ate light or heavy duty gasoline and diesel-powered  
 383 vehicles.

384 "Warehouse clerk" means personnel employed to be  
 385 responsible for receiving, storing, packing and shipping  
 386 goods.

387 "Watchman" means personnel employed to protect  
 388 school property against damage or theft. Additional  
 389 assignments may include operation of a small heating  
 390 plant and routine cleaning duties.

391 "Welder" means personnel employed to provide  
 392 acetylene or electric welding services for a school  
 393 system.

394 In addition to the compensation provided for in  
395 section eight-a of this article, for service personnel,  
396 each service employee shall, notwithstanding any  
397 provisions in this code to the contrary, be entitled to  
398 all service personnel employee rights, privileges and  
399 benefits provided under this or any other chapter of  
400 this code without regard to such employee's hours of  
401 employment or the methods or sources of  
402 compensation.

403 Service personnel whose years of employment  
404 exceed the number of years shown and provided for  
405 under the state minimum pay scale set forth in section  
406 eight-a of this article, may not be paid less than the  
407 amount shown for the maximum years of employment  
408 shown and provided for in the classification in which  
409 he is employed.

410 The county boards shall review each service person-  
411 nel employee job classification annually and shall  
412 reclassify all service employees as required by such  
413 job classifications. The state superintendent of schools  
414 is hereby authorized to withhold state funds approp-  
415 riated pursuant to this article for salaries for service  
416 personnel who are improperly classified by such  
417 county boards. Further, he shall order county boards  
418 to correct immediately any improper classification  
419 matter and with the assistance of the attorney general  
420 shall take any legal action necessary against any  
421 county board to enforce such order.

422 The state board of education is authorized to estab-  
423 lish other class titles of service personnel positions and  
424 jobs not listed in this section. The state board of  
425 education is further authorized to provide appropriate  
426 pay grades for such positions and jobs but pay shall be  
427 established within the minimum salary scale in section  
428 eight-a of this article.

429 No service employee, without his written consent,  
430 may be reclassified by class title, nor may a service  
431 employee, without his written consent, be relegated to  
432 any condition of employment which would result in a  
433 reduction of his salary, rate of pay, compensation or

benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court”.

**§18A-4-8a. Service personnel minimum monthly salaries.**

STATE MINIMUM PAY SCALE PAY GRADE								
Years								
of								
Employment	A	B	C	D	E	F	G	H
0	933	953	993	1,043	1,093	1,153	1,183	1,253
1	955	975	1,015	1,065	1,115	1,175	1,205	1,275
2	977	997	1,037	1,087	1,137	1,197	1,227	1,297
3	999	1,019	1,059	1,109	1,159	1,219	1,249	1,319
4	1,021	1,041	1,081	1,131	1,181	1,241	1,271	1,341
5	1,043	1,063	1,103	1,153	1,203	1,263	1,293	1,363
6	1,065	1,085	1,125	1,175	1,225	1,285	1,315	1,385
7	1,087	1,107	1,147	1,197	1,247	1,307	1,337	1,407
8	1,109	1,129	1,169	1,219	1,269	1,329	1,359	1,429
9	1,131	1,151	1,191	1,241	1,291	1,351	1,381	1,451
10	1,153	1,173	1,213	1,263	1,313	1,373	1,403	1,473
11	1,175	1,195	1,235	1,285	1,335	1,395	1,425	1,495
12	1,197	1,217	1,257	1,307	1,357	1,417	1,447	1,517
13	1,219	1,239	1,279	1,329	1,379	1,439	1,469	1,539
14	1,241	1,261	1,301	1,351	1,401	1,461	1,491	1,561
15	1,263	1,283	1,323	1,373	1,423	1,483	1,513	1,583
16	1,285	1,305	1,345	1,395	1,445	1,505	1,535	1,605
17	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
18	1,329	1,349	1,389	1,439	1,489	1,549	1,579	1,649
19	1,351	1,371	1,411	1,461	1,511	1,571	1,601	1,671
20	1,373	1,393	1,433	1,483	1,533	1,593	1,623	1,693
21	1,395	1,415	1,455	1,505	1,555	1,615	1,645	1,715
22	1,417	1,437	1,477	1,527	1,577	1,637	1,667	1,737



29	23	1,439	1,459	1,499	1,549	1,599	1,659	1,689	1,759
30	24	1,461	1,481	1,521	1,571	1,621	1,681	1,711	1,781
31	25	1,483	1,503	1,543	1,593	1,643	1,703	1,733	1,803
32	26	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
33	27	1,527	1,547	1,587	1,637	1,687	1,747	1,777	1,847
34	28	1,549	1,569	1,609	1,659	1,709	1,769	1,799	1,869
35	29	1,571	1,591	1,631	1,681	1,731	1,791	1,821	1,891
36	30	1,593	1,613	1,653	1,703	1,753	1,813	1,843	1,913

37 CLASS TITLE PAY GRADE

38	Accountant I .....	D
39	Accountant II .....	E
40	Accountant III .....	F
41	Aide I .....	A
42	Aide II .....	B
43	Aide III .....	C
44	Aide IV .....	D
45	Audiovisual Technician .....	C
46	Auditor .....	G
47	Braille or Sign Language Specialist.....	E
48	Bus Operator .....	D
49	Buyer .....	F
50	Cabinetmaker .....	G
51	Cafeteria Manager .....	D
52	Carpenter I .....	E
53	Carpenter II .....	F
54	Chief Mechanic .....	G
55	Clerk I .....	B
56	Clerk II .....	C
57	Computer Operator .....	E
58	Cook I .....	A
59	Cook II .....	B
60	Cook III .....	C
61	Crew Leader .....	F
62	Custodian I .....	A
63	Custodian II .....	B
64	Custodian III .....	C
65	Custodian IV .....	D
66	Director or Coordinator of Services .....	H
67	Draftsman .....	D
68	Electrician I .....	F
69	Electrician II .....	G

70	Electronic Technician I .....	F
71	Electronic Technician II .....	G
72	Executive Secretary .....	G
73	Food Services Supervisor .....	G
74	Foreman .....	G
75	General Maintenance .....	C
76	Glazier .....	D
77	Graphic Artist .....	D
78	Groundsman .....	B
79	Handyman .....	B
80	Heating and Air Conditioning Mechanic I .....	E
81	Heating and Air Conditioning Mechanic II .....	G
82	Heavy Equipment Operator .....	E
83	Inventory Supervisor .....	D
84	Key Punch Operator .....	B
85	Locksmith .....	G
86	Lubrication Man .....	C
87	Machinist .....	F
88	Mail Clerk .....	D
89	Maintenance Clerk .....	C
90	Mason .....	G
91	Mechanic .....	F
92	Mechanic Assistant .....	E
93	Office Equipment Repairman I .....	F
94	Office Equipment Repairman II .....	G
95	Painter .....	E
96	Paraprofessional .....	F
97	Plumber I .....	E
98	Plumber II .....	G
99	Printing Operator .....	B
100	Printing Supervisor .....	D
101	Programmer .....	H
102	Roofing/Sheet Metal Mechanic .....	F
103	Sanitation Plant Operator .....	F
104	School Bus Supervisor .....	E
105	Secretary I .....	D
106	Secretary II .....	E
107	Secretary III .....	F
108	Supervisor of Maintenance .....	H
109	Supervisor of Transportation .....	H
110	Switchboard Operator-Receptionist .....	D
111	Truck Driver .....	D

112	Warehouse Clerk .....	C
113	Watchman .....	B
114	Welder .....	F

115     On and after the first day of July, one thousand nine  
116 hundred ninety, the minimum monthly pay for each  
117 service employee whose employment is for a period of  
118 more than three and one-half hours a day shall be at  
119 least the amounts indicated in the "state minimum  
120 pay scale pay grade" as set forth in this section, and  
121 the minimum monthly pay for each service employee  
122 whose employment is for a period of three and one-  
123 half hours or less a day shall be at least one-half the  
124 amount indicated in the "state minimum pay scale pay  
125 grade" set forth in this section, and an additional ten  
126 dollars per month shall be added to the minimum  
127 monthly pay if the service employee holds a high  
128 school diploma or its equivalent.

129     Any service employee required to work on any legal  
130 school holiday shall be paid at a rate one and one-half  
131 times such employee's usual hourly rate.

132     Any full-time service personnel required to work in  
133 excess of their normal working day during any week  
134 which contains a school holiday for which they are  
135 paid shall be paid for such additional hours or fraction  
136 thereof at a rate of one and one-half times their usual  
137 hourly rate and paid entirely from county board of  
138 education funds.

139     No service employee shall have his or her daily  
140 work schedule changed during the school year without  
141 such employee's written consent, and such employee's  
142 required daily work hours shall not be changed to  
143 prevent the payment of time and one-half wages or  
144 the employment of another employee.

145     The minimum pay for extra-duty assignments as  
146 defined in section eight-b of this article, that are  
147 beyond the normal working day, shall be no less than  
148 one-seventh of the employee's daily total salary for  
149 each hour the employee is involved in performing the  
150 assignment and paid entirely from local funds. The  
151 salary for any fraction of an hour the employee is

152 involved in performing the assignment shall be pro-  
 153 rated accordingly. When performing extra-duty assign-  
 154 ments, employees who are regularly employed on a  
 155 one-half day salary basis shall receive the same hourly  
 156 extra-duty assignment pay computed as though such  
 157 an employee were employed on a full-day salary basis.

**§18A-4-9. Payment of teachers and other employees;  
 withholdings.**

1 Teachers and all other employees whose salaries or  
 2 wages are payable out of the school current fund shall  
 3 be paid for their services by orders duly signed by the  
 4 president and secretary of the board in accordance  
 5 with the following provisions: Notwithstanding any  
 6 other provisions of this chapter and chapter eighteen,  
 7 the number of pays to be made during the school year  
 8 to the various classes of employees shall be deter-  
 9 mined by the board: *Provided*, That the sum of such  
 10 pays for any employee does not exceed the equivalent  
 11 of an annual salary based upon twelve calendar  
 12 months. In the event a teacher or other employee is  
 13 not paid the full salary or wage earned in the fiscal  
 14 year in which the work is performed, the unpaid  
 15 amount may be paid during July and August of the  
 16 following fiscal year. Adjustments for time loss due to  
 17 absence may be made in the next pay check following  
 18 such time loss.

19 The county board may withhold the pay of any  
 20 teacher or employee until he has made the reports  
 21 required by the board or the state superintendent.

22 Accompanying the pay of each employee shall be an  
 23 accounting of gross earnings, all withholdings and the  
 24 dollar value of all benefits provided by the state on  
 25 behalf of the employee.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE  
 COMMISSION.**

**§24-2-1g. Rate incentives for utility investment in qualified  
 clean coal and clean air control technology  
 facilities.**

1 (a) The Legislature hereby finds and declares that  
2 the state of West Virginia has been a major supplier of  
3 coal to the electric power industry both within and  
4 outside of the state of West Virginia; the congress of  
5 the United States is currently considering legislation to  
6 limit the emissions of oxides of sulfur and nitrogen  
7 from coal fired electric generating plants; the con-  
8 tinued use of coal for generating electrical energy can  
9 be accomplished in an environmentally acceptable  
10 manner through the use of current state of the art and  
11 emerging clean coal and clean air technology; it is in  
12 the interest of the economy of West Virginia to  
13 encourage the use of such technologies for the produc-  
14 tion of electricity and steam; revenues from the  
15 continued production of coal are important to the state  
16 of West Virginia and are necessary for the funding of  
17 education and other vital state services; the construc-  
18 tion of electric utility generation and transmission  
19 facilities may continue for many years following the  
20 finalization of plans for such facilities; and the pru-  
21 dence of the construction of such facilities may be  
22 affected by changing conditions during the extended  
23 interval between finalization of plans and completion  
24 of construction.

25 (b) Upon a finding that it is in the public interest of  
26 this state, as provided in section one, article one of this  
27 chapter, the public service commission shall authorize  
28 rate-making allowances for electric utility investment  
29 in clean coal and clean air technology facilities or  
30 electric utility purchases of power from clean coal  
31 technology facilities located in West Virginia which  
32 shall provide an incentive to encourage investments in  
33 such technology.

34 (c) For purposes of this section a qualified clean coal  
35 or clean air technology facility must use coal produced  
36 in West Virginia for no less than seventy-five percent  
37 of its fuel requirements.

38 (d) The public service commission shall determine,  
39 at such time and in such proceeding, form and manner  
40 as is considered appropriate by the commission, the  
41 extent to which any electric utility investment or

42 purchases of power qualify for incentive rate making  
43 pursuant to this section.

**§24-2-11b. Continuing prudence reviews.**

1 (a) If, in granting a certificate of convenience and  
2 necessity for the construction of an electric utility  
3 generating plant, a facility to comply with the federal  
4 Clean Air Act, as amended, or transmission line, the  
5 commission determines that the completion date for  
6 such plant or line is more than one year from the date  
7 of the order granting the certificate, the commission  
8 may require that such construction project or projects  
9 be subject to a continuing prudence review pursuant  
10 to this section.

11 (b) If the commission determines that continuation  
12 of a certificate subject to a continuing prudence  
13 review is not warranted or that the certificate should  
14 be amended, it may rescind or modify its authorization  
15 for construction.

16 (c) The commission shall promulgate such rules and  
17 regulations as it determines are necessary for the  
18 administration of this section. The commission shall  
19 specify, either by rule or for a specific certificated  
20 project, the frequency of each prudence review, the  
21 rate-making treatment to be afforded partially com-  
22 pleted projects, and such other terms and conditions as  
23 it determines are reasonable.

Enr. Com. Sub. for S. B. No. 8] 158

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

*Frederick L. Parker*  
Chairman Senate Committee

*Bernard V. Kelly*  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parrell E. Adams*  
Clerk of the Senate

*Donald G. Kopp*  
Clerk of the House of Delegates

*Keith Burdette*  
President of the Senate

*Don Stall*  
Speaker House of Delegates

The within *is approved* this the *5<sup>th</sup>*  
day of *September*, 1990.

*Yaston Caperton*  
Governor

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

PRESENTED TO THE  
GOVERNOR

Date

9/5/90

Time

4:40 pm