WEST VIRGINIA LEGISLATURE

THIRD EXTRAORDINARY SESSION, 1990

ENROLLED

SENATE BILL NO. 8

(By Senators Bundlette and Harmon)

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; 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.

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

1. Building commission provided for in article six, chapter five of this code;
2. Records management and preservation advisory committee provided for in article eight, chapter five of this code;
3. Public employees retirement system and board of trustees provided for in article ten, chapter five of this code;
4. Public employees insurance agency and public employees advisory board provided for in article sixteen, chapter five of this code;
5. Department of finance and administration and council of finance and administration provided for in article one, chapter five-a of this code;
6. Employee suggestion award board provided for in article one-a, chapter five-a of this code;
7. Governor’s mansion advisory committee provided for in article four-a, chapter five-a of this code;
8. Advisory commission to the information system services division in the department of finance and administration provided for in article seven, chapter five-a of this code;
9. Teachers retirement system and teachers’ retirement board provided for in article seven-a, chapter eighteen of this code;
10. Commission on uniform state laws provided for
(11) Department of personnel of the civil service system and the civil service commission provided for in article six, chapter twenty-nine of this code;

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

(13) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

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

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

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

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

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

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

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

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

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

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

(6) Export development authority provided for in
(7) Labor-management council provided for in article four, chapter five-b of this code;

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

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

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

(11) Resource recovery—solid waste disposal authority provided for in article twenty-six, chapter sixteen of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) Board of miner training, education and certification provided for in article nine, chapter twenty-two of this code;

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

(29) Oil and gas inspectors' examining board provided for in article thirteen, chapter twenty-two of this code;

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

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

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

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

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

(35) Department of banking provided for in article two, chapter thirty-one-a of this code;
(36) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

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

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

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

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

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

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

(4) Department of culture and history, archives and history commission and commission on the arts provided for in article one, chapter twenty-nine of this code.

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

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

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

(3) Department of health and board of health provided for in article one, chapter sixteen of this code;

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

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

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

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

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

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

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

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

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

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

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

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

(1) Adjutant general's department provided for in...
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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;
(3) Office of nonintoxicating beer commissioner provided for in article sixteen, chapter eleven of this code;

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

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

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

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

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

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

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

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

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

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

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

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

(6) Motorcycle safety standards and specifications board provided for in article fifteen, chapter seventeen-c of this code;
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(7) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

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

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

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter, and all boards which are appellate bodies or were otherwise established to be independent decision-makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

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

(k) The crime victims compensation fund provided for in article two-a, chapter fourteen of this code, including all of the allied, advisory, affiliated or
related entities and funds associated therewith, is hereby transferred to and incorporated in and shall be administered as a part of the court of claims.

CHAPTER 11. TAXATION.

ARTICLE IC. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1. Legislative findings.

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

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

(c) The Legislature finds that requiring the valuation of property occur in three-year cycles with an annual adjustment of assessments as to those properties for which a change in value is discovered shall not violate the equal and uniform provision of section one, article ten of the West Virginia Constitution, the Legislature further finding that such three-year cycle and annual adjustment are an integral and indispensable part of a systematic review of all properties in order to achieve equality of assessed valuation within and among the counties of this state. Notwithstanding such finding, the Legislature intends to permit the assessors and the board of public works to place proportionately uniform percentage changes in values on the books during the two tax years preceding the tax year beginning on the first day of July, one thousand nine hundred ninety-three, in accordance with the provisions of section seven of this article.

(d) The Legislature deems that the goal of this
article is that by the end of the three-year cycle contemplated by this article, and thereafter from year to year, all property shall be annually assessed at sixty percent of its then current fair market value except for the values derived for farms and managed timberland properties, which are to be valued as prescribed 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.

(a) There is hereby created, under the department of tax and revenue, a property valuation training and procedures commission which consists of the state tax commissioner, or a designee, who shall serve as chairperson of the commission, three county assessors, five citizens of the state, one of which shall be a certified appraiser, and two county commissioners. The assessors, five citizen members and two county commissioners shall be appointed by the governor with the advice and consent of the Senate. For each assessor to be appointed, the West Virginia assessors association shall nominate three assessors, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. For each of the two county commissioners to be appointed, the county commissioner's association of West Virginia shall nominate three commissioners, no more than two of whom shall belong to the same political party, and shall submit such list of nominees to the governor. Except for the tax commissioner, there may not be more than one member from any one county. No more than seven members of the commission shall belong to the same political party: Provided, That any member of the commission who is a direct party to any dispute before the board shall excuse himself or herself from any consideration or vote regarding the dispute. By the first day of November, one thousand nine-hundred ninety, the governor shall appoint the fifth citizen member, who shall serve a two-year term.

(b) All members, except the tax commissioner, shall
serve for four-year terms: Provided, That of the members initially appointed, two assessors, one county commission member and two citizens shall serve two-year terms, and one assessor, one county commissioner member and three citizen members shall serve four-year terms. Any assessor member and county commissioner member ceases to be a member immediately upon leaving the office of assessor or county commissioner. Members shall remain members of the commission until their successors have been appointed. In case of a vacancy occurring prior to the end of the term of a member, a replacement shall be appointed within thirty days in the same manner as the member was appointed and shall serve until the end of the term of the member so replaced.

(c) The tax commissioner shall call the first meeting of the commission within thirty days of the appointment of the assessor, county commissioner and citizen members. Subsequently, meetings shall be at the call of the chairperson or at the written request of any four members, except that the commission shall meet at least twice annually. Assessor members, county commissioner members and the tax commissioner shall serve without compensation, and citizen members shall receive fifty dollars per day for each day of actual service rendered. All members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the commission.

(d) The commission shall be funded by an appropriation by the Legislature through a separate line item appropriated to the state tax commissioner.

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

(a) On or before the first day of October, one thousand nine hundred ninety, and thereafter as necessary the property valuation training and procedures commission shall perform the following duties:

(1) Devise training and certification criteria for county assessors and their employees and members of county commissions, which shall include a definition
of “appropriate staff member” as the term is used in section six of this article relating to required training, which definition shall include deputy assessors as provided for in section three, article two of this chapter;

(2) Establish uniform, statewide procedures and methodologies for the mapping, visitation, identification and collection of information on the different species of property, which procedures and methodologies shall include reasonable requirements for visitation of property, including a requirement that a good faith effort be made to contact any owner of owner-occupied residential property: Provided, That the commission is not authorized to establish the methods to value real and personal property, but shall have the authority to approve such methods;

(3) Develop an outline of items to be included in the county property valuation plan required in section seven of this article, which shall include information to assist the property valuation training and procedures commission in its determination of the distribution of state funds provided pursuant to section eight of this article.

(b) On or before the first day of July, one thousand nine hundred ninety-one, the commission shall establish objective criteria for the evaluation of the performance of the duties of county assessors and the tax commissioner.

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

(d) The commission shall have the power to make such rules as it deems necessary to carry out the provisions of this section, which rules shall include procedures for the maintenance, use, sale and repro-
duction of microfilm, photography and tax maps. Any rules adopted by the commission prior to the first day of October, one thousand nine hundred ninety, under subsection (a) of this section are exempt from the provisions of article three of chapter twenty-nine-a of this code: Provided, That the commission shall file a copy of any rule so exempted from the provisions of chapter twenty-nine-a of this code with the legislative rule-making review committee created pursuant to section eleven, article three of said chapter prior to the thirtieth day of November, one thousand nine hundred ninety.

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

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

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

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

(a) In addition to the powers and duties of the tax commissioner in other provisions of this article and this code, the tax commissioner shall have the power and duty to:
(1) Perform such duties and exercise such powers as may be necessary to accomplish the purposes of this article;

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

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

(B) As to managed timberland as defined in section two of this article, the tax commissioner shall provide a method to appraise such property in the state so that all such property is valued in the same manner no matter where it is situated in the state, which shall be a valuation based on its use and productive potential as managed timberland, which may be accorded special valuation as forestlands as authorized by section fifty-three, article six of the Constitution of West Virginia: Provided, That timberland that does not qualify for identification as managed timberland shall be valued at market value: Provided, however, That the tax commissioner may not implement any rules or
regulations in title one hundred ten, which relate to
valuation or classification of timberland: Provided
further, That on or before the first day of October, one
thousand nine hundred ninety, the tax commissioner
shall, in accordance with chapter twenty-nine-a of this
code, promulgate new rules relating to the valuation
and classification of timberland.

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

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

(3) Evaluate the performance of each assessor based
upon the criteria established by the commission and
each county's approved plan and take appropriate
measures to require any assessor who does not meet
these criteria or adequately carry out the provisions of
the plan to correct any deficiencies. Such evaluation
shall include the periodic review of the progress of
each assessor in conducting the appraisals required in
sections seven and nine of this article and in following
the approved valuation plan. If the tax commissioner
determines that an assessor has substantially failed to perform the duties required by said sections, the tax commissioner shall take all necessary steps, including the appointment of one or more special assessors in accordance with the provisions of section one, article three of this chapter, or utilize such other authority as the commissioner has over county assessors pursuant to other provisions of this code as may be necessary to complete the tasks and duties imposed by this article:

Provided, That a writ of mandamus shall be the appropriate remedy if the tax commissioner fails to perform his or her statutory duty provided for in section five, article one of this chapter.

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

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

(6) Establish by uniform rules a procedure for the sale of computer generated material and appraisal manuals. Any funds received as a result of the sale of such reproductions shall be deposited to the appropriate account from which the payment for reproduction is made.

(b) The tax commissioner may adopt any regulation adopted prior to the first day of January, one thousand nine hundred ninety, pursuant to article one-a of this chapter, which adoption shall not constitute an implementation of the statewide mass reappraisal of property. Such adoption, including context modifications made necessary by the enactment of this article, shall occur on or before the first day of July, one thousand
nine hundred ninety-one, through inclusion in the plan required by section ten of this article or inclusion in the minute record of the valuation commission. Upon the adoption of any such regulations, any modification or repeal of such regulation shall be in accordance with the provisions of article three, chapter 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 commissioner under section ten of this article and property appraised and assessed under article six of this chapter, all assessors shall, within three years of the approval of the county valuation plan required pursuant to this section, appraise all real and personal property in their jurisdiction at fair market value except for special valuation provided for farmland and managed timberland. They shall utilize the procedures and methodologies established by the property valuation training and procedures commission and the valuation system established by the tax commissioner.

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

13 (c) Before beginning the valuation process, each assessor shall develop a county valuation plan for using information currently available, for checking its accuracy and for correcting any errors found. The plan must be submitted to the tax commissioner on or
before the first day of December, one thousand nine hundred ninety, for review and approval, and such plan must be revised as necessary and resubmitted every three years thereafter. Whenever a plan is submitted to the tax commissioner, a copy shall also be submitted to the county commission of that county and the property valuation training and procedures commission, and that county commission and the property valuation training and procedures commission may forward comments to the tax commissioner. The tax commissioner shall respond to any plan submitted or resubmitted within sixty days of its receipt. The valuation process shall not begin nor shall funds provided in section eight of this article be available until the plan has received approval by the tax commissioner: Provided, That any initial plan that has not received approval by the commissioner prior to the first day of May, one thousand nine hundred ninety-one, shall be submitted on or by such date to the valuation commission for resolution prior to the first day of July, one thousand nine hundred ninety-one, by which date all counties shall have an approved valuation plan in effect.

(d) Upon approval of the valuation plan, the assessor shall immediately begin implementation of the valuation process. Any change in value discovered subsequent to the certification of values by the assessor to the county commission, acting as the board of equalization and review, in any given year shall be placed upon the property books for the next certification of values: Provided, That notwithstanding any other provision of this code to the contrary, the property valuation training and procedures commission may authorize the tax commissioner to approve a valuation plan and the board of public works to submit such a plan which would permit the placement of proportionately uniform percentage changes in values on the books that estimate the percentage difference between the current assessed value and sixty percent of the fair market value for classes or identified sub-classes of property and distribute the change between the two tax years preceding the tax year beginning on the first
day of July, one thousand nine hundred ninety-three.

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

(e) The county assessor shall establish and maintain as official records of the county tax maps of the entire county drawn to scale or aerial maps, which maps shall indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved, and identify the respective parcels or lots by a system of numbers or symbols and numbers, whereby the ownership of such parcels and lots can be ascertained by reference to the appropriate records:

Provided, That all such records shall be established and maintained and the sale or reproduction of microfilm, photography and maps shall be in accordance with legislative rules promulgated by the commission.

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

§11-1C-8. Additional funding for assessors' offices; maintenance funding.
(a) In order to finance the extra costs associated with the valuation and training mandated by this article, there is hereby created a revolving valuation fund in each county which shall be used exclusively to fund the assessor's office. The valuation and training programs, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety, shall be funded through the valuation commission and distributed in accordance with need on a county by county basis and the county's approved plan. The necessary funds shall be transferred to each county's valuation fund following approval of the plans submitted by the respective assessors. The said funds shall be transferred by the valuation commission on condition that no persons shall be hired hereunder without the approval of the valuation commission, such hirings shall be without regard to political favor or affiliation, and such persons hired hereunder shall be subject to the provisions of the ethics act in chapter six-b of this code, including, but not limited to, the conflict of interest provisions thereunder. Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing and appraising duties under this chapter upon approval of such employment by the valuation commission.

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

(b) To finance the ongoing extra costs associated with the valuation and training mandated by this article, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred
ninety-one, and for a period of at least three consecutive years, an amount equal to two percent of the previous year’s projected tax collections from the regular levy set by, or for, the county commission, the county school board and any municipality in the county shall be prorated as to each levying body, set aside and placed in the valuation fund. Such two percent payment shall continue in any county where funds borrowed from the state pursuant to subsection (a) of this section have not been fully repaid until such moneys, together with accrued interest thereon, has been fully repaid or until the first day of July, one thousand nine hundred ninety-four, whichever comes last. Each year thereafter, the valuation fund shall be continued at an annual amount of one percent of the previous year’s projected tax collections from such regular levies: Provided, That county commissions and municipalities may present written evidence, prior to the thirty-first day of March each year, acceptable to the valuation commission showing that a lesser amount would be adequate to fund the extra costs associated with the valuation mandated by section seven of this article: Provided, however, That the valuation commission shall meet prior to the fifteenth day of April to consider and decide upon all written evidence so submitted: Provided further, That the county commissions, in addition, shall fund the county assessor’s office at least the level of funding provided during the fiscal year in which this section was initially enacted.

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

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

1. (a) As used in this section:

1. (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.

1. (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 timber-
land as defined in section two of this article, and other
minerals.

1. (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 else-
where 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
a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state department of energy. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state department of energy shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The tax commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds two million dollars or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding two million dollars. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(e) The tax commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before the first day of January, one thousand nine hundred ninety-one, for its approval on or before the first day of July of such year. Such plan shall be revised, resubmitted to
the commission and approved every three years thereafter.

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

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

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: Provided, That the office of the state attorney general shall provide legal representation on behalf of the tax commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner shall not become effective prior to the first day of July, one thousand nine hundred ninety-one. The property owner may request a hearing by the director of the division of forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property.
A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

§11-iC-12. Board of equalization and review; assessments; board of public works.

(a) As valuations of property in a county are completed to the extent that a total valuation of property can be determined, such valuation shall be delivered by the assessor to the county commission, and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property.

(b) For the tax year subsequent to the end of the initial valuation period in each county, and for each year thereafter, each county shall implement a uniform assessment that is equal to sixty percent of the most current appraised value for all real and personal property situated within the county. Such implementation shall be in accordance with provisions to be included in the plan required by section seven of this article.

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

(d) The board of public works, in performing the duties required in article six of this chapter relating to the assessment of public service businesses, shall submit on or before the first day of January, one thousand nine hundred ninety-one, a plan to the property valuation training and procedures commission for implementing on or before the first day of July, one thousand nine-hundred ninety-four, and for each year thereafter, a uniform assessment that is equal to sixty percent of the most current valuation for all property valued by the board of public works. Such plan shall be approved on or before the first day
ARTICLE 3. ASSESSMENTS GENERALLY.

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

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

1. The taxpayer having signed the assessment form after it had been completed showing the increase;

2. Notice was given as provided in section three-a of this article; or

3. The person so assessed executing acknowledging of the notice of the increase.

(b) During the initial reappraisal of all property under section seven, article one-c of this chapter, the tax commissioner and each county assessor shall send
every person owing or controlling property appraised by the tax commissioner or the county assessor, as the case may be, a pamphlet which explains the reappraisal process and its equalization goal in a detailed yet informal manner. The property valuation training and procedures commission, created under section three, article one-c of this chapter, shall design the pamphlet for use in all counties while allowing individual county information to be included if it determines that the information would improve understanding of the process.

ARTICLE 8. LEVIES.

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

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

An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in the reduced levy calculation set forth in subsection (b) of this section.
(b) The reduced rates of levy shall be calculated in the following manner:

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

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

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

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

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

(c) The governing body of a county or municipality may, after conducting a public hearing, which may be held at the same time and place as the annual budget hearing, increase the rate above the reduced rate required in this section if any such increase is deemed to be necessary by such governing body: Provided, That in no event shall the governing body of a county or municipality increase the rate above the reduced rate required by subsection (b) of this section for any
single year in a manner which would cause total
property tax revenues accruing to the governing body
of the county or municipality, excepting additional
revenue attributable to assessed valuations of newly
created properties not assessed in the previous year’s
tax book for each class of property, to exceed by more
then ten percent those property tax revenues received
by the governing body of the county or municipality
for the next preceding year: Provided, however, That
this provision shall not restrict the ability of a county
or municipality to enact excess levies as authorized
under existing statutory or constitutional provisions.

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

NOTICE OF PROPOSED TAX INCREASE

The (name of the county or municipality) proposes
to increase property tax levies.
1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional assessments due to new or improved property, exceeds last year's total assessed value of property by _________ percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of property tax as last year, when multiplied by the new total assessed value of property with the exclusions mentioned above, would be $ _____ per $100 of assessed value for Class I property, $______ per $100 of assessed value for Class II property, $______ per $100 of assessed value for Class III property, and $______ per $100 of assessed value for Class IV property. These rates will be known as the "lowered tax rates".

3. Effective Rate Increase: The (name of the county or municipality) proposes to adopt a tax rate of $____ per $100 of assessed value for Class I property, $____ per $100 of assessed value for Class II property, $____ per $100 of assessed value for Class III property, and $____ per $100 of assessed value for Class IV property. The difference between the lowered tax rates and the proposed rates would be $ _____ per $100, or _____ percent for Class I; $_____ per $100, or _____ percent for Class II; $_____ per $100, or _____ percent for Class III and $_____ per $100, or _____ percent for Class IV. These differences will be known as the "effective tax rate increases".

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

4. Revenue produced last year: $____

5. Revenue projected under the effective rate increases: $____

6. Revenue projected from new property or improvements: $____

7. General areas in which new revenue is to be allocated: A public hearing on the increases will be held on (date and time) at (meeting place). A decision regarding the rate increase will be made on (date and
(d) All hearings are open to the public. The governing body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as are determined by the governing body.

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

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

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of one percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year’s projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five, article eight of this chapter for the assessment period just concluded shall be
reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Class III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred one percent: Provided, That the one hundred one percent figure shall be increased by the amount the boards of educations' increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3), above, by the total weighted net assessed value as calculated in paragraph two of this section and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

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

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

(c) This section shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after the first day of July, one thousand nine hundred ninety-one. If any
provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions 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.

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

An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section.

(b) Any local levying body projected to realize such increase greater than four percent shall conduct a public hearing no later than the twentieth day of March, which hearing may be held at the same time and place as the annual budget hearing. Notice of the public hearing and the meeting in which the levy rate shall be on the agenda shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: Provided, That a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsec-
tion, may post no less than four notices of each public hearing, which posted notices shall contain the information required by the publication notice and which shall be in available, visible locations including the town hall. The notice shall be at least the size of one-eighth page of a standard size newspaper or one-fourth page of a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county. The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

HEARING REGARDING SPECIAL LEVY RATES

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

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

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

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

4. Revenue Projected from New Property or Improvements: $ ......

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

A public hearing on the issue of special levy rates will be held on (date and time) at (meeting place). A decision regarding the special levy rate will be made
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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
section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

§11-12B-2. Definitions.

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

(b) Terms defined.

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

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

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

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

(5) “Fiduciary” means and includes, a guardian, trustee, executor, administrator, receiver, conservator
or any person acting in any fiduciary capacity for any person.

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

(7) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

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

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

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

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

(12) "Tax commissioner" means the tax commissioner of the state of West Virginia, or his delegate.
(13) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

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

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

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

(17) "Ton" means two thousand pounds.

§11-12B-3. Imposition of tax, credit.

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

(b) Credit against article thirteen-a tax.—A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on coal by section three, article thirteen-a of this chapter, but not including the additional severance tax on coal imposed by section six of said
article thirteen-a, equal to the liability of the taxpayer
for the taxable year for payment of the minimum
severance tax on coal imposed by this article: Pro-
vided, That the amount of credit allowed by this
section shall not exceed the severance tax liability of
the taxpayer for the taxable year determined under
paragraph one, subsection (b), section three of said
article thirteen-a exclusive of the additional tax on
coal imposed by section six of said article thirteen-a
after application of all credits to which the taxpayer
may be entitled except any credit for installment
payments of estimated tax paid pursuant to section six
of this article during the tax year and any credit for
overpayment of article thirteen-a tax.


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

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

(c) Methods of accounting.

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

(2) Change of accounting methods.—If a taxpayer’s
method of accounting is changed for federal income
tax purposes, his method of accounting for purposes of
this article shall similarly be changed. The taxpayer
shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-12B-5. Annual return.

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

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

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

(a) General rule.—The annual tax levied under this article shall be due and payable in periodic installments as follows:

(1) Tax of more than $1,000 per month.—For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subdivision on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance,
(2) Tax of $1,000 per month or less.—For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

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

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

§11-128-7. Time and place for paying tax shown on returns.

(a) General rule.—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

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

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


(a) Amount determined on return.—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency.—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

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

§11-128-10. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charles-
§11-12B-11. Signing of returns and other documents.

(a) General.—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns.—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

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

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

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

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

(a) Whenever it is deemed necessary to ensure
compliance with this article, the tax commissioner may require any taxpayer to post a cash or corporate surety bond.

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

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

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

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

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

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

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.


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


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

§11-128-17. Severability.

1 If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-128-18. Effective date; and compliance.
(a) **Effective date.**—The tax imposed by this article shall take effect on the first day of October, one thousand nine hundred ninety, apply to coal sold or delivered for sale, profit or commercial use on or after that date.

(b) **Compliance.**—To facilitate ease of administration and ease of compliance by taxpayers, the tax commissioner may require persons subject to the tax imposed by this article and persons subject to the tax imposed by article thirteen-a of this chapter to file combined returns or declarations of estimated tax for both taxes 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.**

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

(1) Twenty-six hundredths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer during the taxable year, except that this rate shall be five hundredths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer and sold to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: **Provided,** That in order to encourage the development of industry to improve the environment of this state, the tax imposed by this section on any person generating or producing electric power and an alternative form of energy at a facility located within
this state substantially from gob or other mine refuse
shall be equal to five hundredths of one cent times the
kilowatt hours of net generation or production avail-
able for sale. The measure of tax under this paragraph
shall be equal to the total kilowatt hours of net
generation available for sale that was generated or
produced in this state by the taxpayer during the
taxable year, regardless of the place of sale or use, or
the fact that transmission may be made to points
outside this state.

(2) Nineteen-hundredth of one cent times the kilo-
watt hours of electricity sold to consumers in this state
that were not generated or produced in this state by
the taxpayer, except that the rate shall be five hun-
dredths of one cent times the kilowatt hours of
electricity not generated or produced in this state by
the taxpayer which is sold to a plant location in this
state of a customer engaged in manufacturing activity
if the contract demand at such plant location exceeds
two hundred thousand kilowatts per hour per year or
if the usage at such plant location exceeds two hun-
dred thousand kilowatts per hour in a year. The
measure of tax under this paragraph shall be equal to
the total kilowatt hours of electricity sold to consumers
in this state during the taxable year, that were not
generated or produced in this state by the taxpayer, to
be determined by subtracting from the total kilowatt
hours of electricity sold to consumers in the state the
net kilowatt hours of electricity generated or produced
in the state by the taxpayer during the taxable year.

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

(b) Exemptions.—The provisions of this section shall
not apply to:

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

(2) Kilowatt hours of electric power that are separately metered and consumed in an electrolytic process for the manufacture of chlorine.

(3) Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this paragraph, the term "ferroalloy" means any of the various alloys of iron and one or more other elements used as a raw material in the production of steel but shall not include electric power used in the production of steel.

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

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

(d) Transition rule.—Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-d and two-m of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, liability for tax under section two-n of this article is equal to or greater than the sum of the power company's liability for payment of tax under paragraph (3), subsection (a), section two-d and section two-m of this article, then the company shall pay the tax due under section two-
of this article and not the tax due under paragraph (3), subsection (a) of section two-d and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under paragraph (3), subsection (a), section two-d and section two-m of this article and the tax due under section two-n shall not expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

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

(a) General rule.—The expired provisions in subsection (j), section nine of this article, which previously exempted sales of tangible personal property to persons engaging in the activity of contracting, pursuant to a written contract with the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another governmental entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental entity for a governmental or proprietary purpose, shall continue in force for:

(1) Tangible personal property purchased by a contractor on or after the first day of October, one thousand nine hundred ninety, in fulfillment of a written contract for contracting, as defined in section two of this article, that was executed and legally binding on the parties thereto on or before the
fifteenth day of September, one thousand nine hundred ninety; or in fulfillment of a written contract entered into after said fifteenth day of September pursuant to a written bid for contracting that was made on or before said fifteenth day of September that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; and

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

(b) Renewals and extensions.—A renewal of any contract shall constitute a new contract for purposes of this section, and the date of entry into a contract renewal by the parties, the date or dates of tender of consideration and the time of performance of any contractual obligations under a renewed contract shall be treated as the dates for determining application of this section to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract for performance of the contract or for tender of consideration under the contract shall not be treated as contract renewals. Contracts to which such extensions apply shall be treated under these transition rules as if the original contractual provisions for performance and tender of consideration remain in effect. For purposes of this section, the terms "contract" or "contracts", and "contract renewal" or "renewal" shall have the same meaning as defined in subsection (d), section eight-a of this article.

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

Persons who perform “contracting” as defined in section two of this article, or persons acting in an...
agency capacity, may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled shall be invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is directly invoiced to and paid by such taxpayer: Provided, That this section shall not apply to purchases by an employee for his or her employer; purchases by a partner for his or her partnership; or purchases by a duly authorized officer of a corporation, or unincorporated organization, for his or her corporation or unincorporated organization, so long as the purchase is invoiced to and paid by such employer, partnership, corporation or unincorporated organization.

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


The following sales and services are exempt:

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

(b) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts; board of trustees of the university system of West Virginia, or the board of
directors for colleges located in this state;

c) Sales of property or services to the state, its institutions or subdivisions, governmental units, institutions or subdivision of other states: Provided, that the law of such other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

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

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

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

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

(2) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(3) A corporation or organization which annually receives more than one half of its support from any
50 combination of gifts, grants, direct or indirect charitable contributions, or membership fees;
51
52 (4) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise such gross income (or the tangible personal property or services purchased with such net income), is donated to an organization which is exempt from income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended; or
53
54 (5) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program, and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members.
55
56 (6) For purposes of this subsection:
57 (A) The term “support” includes, but is not limited to:
58 (i) Gifts, grants, contributions or membership fees;
59 (ii) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of section 513 of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;
60 (iii) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business;
61 (iv) Gross investment income as defined in section 509(e) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;
62 (v) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on
behalf of such organization; and

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

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

(C) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

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

(g) Sales of property or services to persons engaged in this state in the business of manufacturing, transportation, transmission, communication or in the
production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

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

(i) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel shall not be exempt;
(j) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by such person or his agent into any real property, building or structure shall not be exempt under this subsection, except that sales of tangible personal property to a person engaging in the activity of contracting pursuant to a written contract with the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another government entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental entity for a governmental or proprietary purpose, who incorporates such property in such building, structure or improvement shall, with respect to such tangible personal property, nevertheless be deemed to be the vendor of such property to the governmental entity and any person seeking to qualify for and assert this exception must do so pursuant to such legislative rules and regulations as the tax commissioner may promulgate and upon such forms as the tax commissioner may prescribe. A subcontractor who, pursuant to a written subcontract with a prime contractor who qualifies for this exception, provides equipment, or materials, and labor to such a prime contractor shall be treated in the same manner as the prime contractor is treated with respect to the prime contract under this exception and the legislative rules and regulations promulgated by the tax commissioner: Provided further, That the exemption for government contractors in the preceding proviso shall expire on the first day of October, one thousand nine hundred ninety, subject to the transition rules set forth in section
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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
(2) The provisions of this subsection (q), as amended by this act, shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

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

(s) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes shall be subject to tax at the three-percent rate;

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

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

(v) Notwithstanding the provisions of subsection (g) of this section or any provisions of this article to the contrary, sales of property and services to persons subject to tax under article thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply both to property or services directly or not directly used or consumed in the conduct of privileges which are subject to tax under such articles but shall not apply to purchases of
gasoline or special fuel;

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

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

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

(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) “electronic data processing services” means (1) the processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment;

(aa) Tuition charged for attending educational summer camps;
(bb) Sales of building materials or building supplies
or other property to an organization qualified under
section 501 (c)(3) or (c)(4) of the Internal Revenue
Code of one thousand nine hundred eighty-six, as
amended, which are to be installed in, affixed to or
incorporated by such organization or its agent into real
property, or into a building or structure which is or
will be used as permanent low-income housing, trans-
sitional housing, emergency homeless shelter, domes-
tic violence shelter or emergency children and youth
shelter if such shelter is owned, managed, developed
or operated by an organization qualified under section
501(c)(3) or (c)(4) of the Internal Revenue Code of one
thousand nine hundred eighty-six, as amended;

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

(dd) Food for the following shall be exempt:

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

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

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

(4) Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose;

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

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

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

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

(hh) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;
(ii) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provisions of any other chapter of this code;

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

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

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

(mm) Sales of aircraft repair, remodeling and maintenance services when such services are to an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of
persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools, or equipment, directly used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity.


(a) Subject to the exceptions set forth in subsection (b) of this section, the taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing: (a) The total gross proceeds of his business for that month; (b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the tax shall accompany the return: Provided, That notwithstanding the provisions of section thirty of this article, any such tax collected by the alcohol beverage control commissioner from persons or organizations licensed under authority of article seven, chapter sixty of this code shall be paid into a revolving fund account in the state treasury, designated the drunk driving prevention fund, to be administered by the commission on drunk driving prevention, subject to appropriations by the Legislature: Provided, however, That any balances in the drunk driving prevention fund on the first day of July, one thousand nine hundred eighty-nine, and all moneys received into such fund during
the fiscal year commencing the first day of July, one thousand nine hundred eighty-nine, may, up to a maximum of seven hundred fifty thousand dollars, be used by the department of public safety for personal services, employee benefits and unclassified expenditures for the time period commencing the first day of July, one thousand nine hundred eighty-nine, and ending the last day of June, one thousand nine hundred ninety, subject to appropriation by the Legislature. A monthly return shall be signed by the taxpayer or his duly authorized agent.

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

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

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

(4) When a taxpayer required to make an advanced
payment of tax under paragraph one of this
subsection-b makes out its return for the month of
June, which is due on the fifteenth day of July, such
taxpayer may claim as a credit against its liability
under this article for tax on taxable transactions
during the month of June, the amount of the
advanced payment of tax made under paragraph one
of this subsection (b).


1 The proceeds of the tax imposed by this article shall
be deposited in the general revenue fund of the state:
Provided, That beginning the first day of July, one
thousand nine hundred eighty-nine, and continuing
each month thereafter through the last day of July,
one thousand nine hundred ninety-two, the first five
million dollars of proceeds of this tax for each month
shall be paid into the “Fiscal Responsibility Fund”
created by section nineteen, article one, chapter five of
this code and used for the purposes specified therein,
and that on and after the first day of August, one
thousand nine hundred ninety-two, and continuing
each month thereafter through the last day of August,
one thousand nine hundred ninety-six, the first five
million dollars of proceeds of this tax for each month
shall be paid into the “Education Enhancement Fund”
created by section nine-d, article six, chapter twelve of
this code: Provided, however, That for the fiscal year
one thousand nine hundred eighty-nine, one million
dollars of the proceeds of the tax imposed by this
article shall be dedicated to the cancer center at West
Virginia University and eight million dollars of the
proceeds of the tax imposed by this article shall be
dedicated to the “Higher Education Salary Fund”
which is hereby created in the state treasury. All
moneys credited to the higher education salary fund
shall be expended by the appropriate higher education
governing board for further implementation of the fee
schedules established in articles eight and nine,
chapter eighteen-b of this code.
ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

(a) Business and occupation tax credit.—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Severance tax credit.—On and after the first day of July, one thousand nine hundred eighty-seven, a credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen-a, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer.
for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed.

In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

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

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

(a) **General.**—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld. Where the aggregate amount so deducted and withheld by any employer is less than twenty-five dollars in a calendar quarter and the aggregate for the calendar year can reasonably be expected to be less than one hundred dollars, the tax commissioner may by regulation permit an employer to file an annual return and pay over to the tax commissioner the taxes deducted and withheld on or before the last day of the month following the close of such calendar year. The tax commissioner may, if he believes such action necessary for the protection of the revenues, require any employer to make such return and pay to him the tax deducted and withheld at any time, or from time to time.
(b) Monthly returns and payments of withheld tax on and after June 1, 1971.—Notwithstanding the provisions of subsection (a), on and after June 1, 1971, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld, if such withheld taxes aggregate one hundred dollars or more for such month; except any employer with respect to whom the tax commissioner may have by regulation provided otherwise in accordance with the provisions of subsection (a): Provided, That in accordance with regulations promulgated by the tax commissioner, a payment of withheld tax may be subject to the credit set forth in section nine-b, article fifteen of this chapter and the credit set forth in section three-b, article fifteen-a of this chapter.

(c) Deposit in trust for tax commissioner.—Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the tax commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such tax in such account until payment over to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served by the tax commissioner.

(d) Accelerated payment.

(1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December, one thousand nine hundred ninety, every employer required to deduct and withhold tax whose average payment per
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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 withholding
72 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
thirteen-a, chapter eleven of this code.—A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for the severance tax imposed under article thirteen-a, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the severance tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect, in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its severance tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen-a, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen-a computed without reduction for the tax credit for coal loading facilities or for industrial expansion or revitalization allowed for such year.

Expiration of credit.—The credit authorized in this section shall expire and not be authorized or allowed for any taxable year beginning on or after the first day 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.
Investment accounts shall be those accounts established by the board of investments for the buying and selling of securities for investment for the state of West Virginia or any official, department, board, commission or agency thereof or to meet obligations to paying agents or for paying charges incurred for the custody, safekeeping and management of such securities pursuant to the provisions of section five, article five of this chapter, or for paying the charges of any bank or trust company acting as paying agent or copaying agent for a bond issue of the state pursuant to the provisions of section seven-a, article one, chapter fifty-seven of this code.

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

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

The amount of money needed for current operation purposes of the state government, as determined by
the board of investments, shall be maintained at all
times in the state treasury, in cash or in disbursement
accounts with banks designated as depositories in
accordance with the provisions of this section. No state
officer or employee shall make or cause to be made
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
savings and loan association in this state shall, upon
request made to the board of investments, be desig-
nated as an eligible depository for interest earning
deposits of state funds if such bank or state or federal
savings and loan association meets the requirements
set forth in this chapter. For purposes of this article,
the term “interest earning deposits” includes certifi-
cates of deposit. The board of investments, shall make
and apportion such interest earning deposits and shall
prescribe the interest rates, terms and conditions of
such deposits, all in accordance with the provisions of
article six of this chapter: Provided, That state or
federal savings and loan associations insured by an
agency of the federal government shall be eligible for
such deposits not in excess of one hundred thousand
dollars: Provided, however, That notwithstanding any
provision of this article to the contrary, no such
interest earning deposits may be deposited in any
depository which has been in existence over a period
of five years which does not have a loan to deposit
ratio of fifty percent or more and which does not have
farm, single or multifamily residential unit loans in an
amount greater than twenty-five percent of the
amount of loans representing a loan-to-deposit ratio of
fifty percent. For the purpose of making the foregoing
calculation, the balances due the depository on the
following loans shall be given effect: (1) Qualifying
residential loans held by the depository; (2) qualifying
loans made in participation with other financial
institutions; (3) qualifying loans made in participation
with agencies of the state, federal or local govern-
ments; and (4) qualifying loans originated and serviced
by the depository but owned by an out-of-state investor. The computation of the criteria for eligibility specified above shall be based on the average daily balances of deposits, the average daily balances of total loans and qualifying residential loans for the period being reported.

§12-1-4. Bonds to be given by depositaries.

Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government, the board of investments shall require such depository to give a collaterally secured bond, in the amount of not less than ten thousand dollars, payable to the state of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with such depository, or of any accrued interest on deposits. Such bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the board of investments. The collateral security for such bond shall consist of bonds of the United States, of the federal land banks, of the federal home loan banks, or bonds of the state of West Virginia or of any county, district or municipality of this state, or other bonds or securities approved by the board of investments. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of such bond may be permitted with the approval in writing of the state board of investments. All depository bonds shall be recorded by the board of investments in a book kept in its office for the purpose, and a copy of such record, certified by the board of investments, shall be prima facie evidence of the execution and contents of such bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the board of investments, and in the event said securities are delivered to the board of investments, it shall furnish a receipt therefor to the owner thereof. The board of investments and its bondsmen
shall be liable to any person for any loss by reason of
the embezzlement or misapplication of said securities
by the board of investments or any of its employees,
and for the loss thereof due to the board of invest-
ments' negligence or the negligence of its employees;
and such securities shall be delivered to the owner
thereof when liability under the bond which they are
pledged to secure has terminated. The board of
investments may permit the deposit under proper
receipt of such securities with one or more banking
institutions within or outside the state of West Virginia
and may contract with any such institution for safe-
keeping and exchange of any such collateral securities,
and may prescribe the rules and regulations for
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
law, the state board of investments may transfer funds
by check or bank wire whenever actually needed to
pay the warrants drawn by the auditor upon the
treasury, to equalize deposits or to provide funds to
purchase investments for the account of the state. All
checks drawn for transfer of funds shall have printed
or stamped on the face of same “for transfer of funds
only”, or if the transfer is made by wire, the bank
wire and supporting documents shall be marked “for
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
office a record showing the account of each depository.
Under the account of each depository entry shall be
made showing the amount and date of each deposit,
the amount and date of each withdrawal and the
balance on deposit. The board of investments shall
cause the state’s account with each depository to be
settled at the end of every month of the year and the
balance in the depository to the credit of the board of investments to be carried forward to the account of the next month.

All the statements and records shall be reconciled monthly and the reconciled reports shall be kept in the board of investment's office. The reconciled records for each month shall be kept in the board of 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.

When the funds in the treasury exceed the amount needed for current operational purposes, as determined by the board of investments, the treasurer shall make all of such excess available for investment by the board of investments, which shall invest the same for the benefit of the general revenue fund.

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

The board of investments may transfer funds to banks outside the state for investment purposes or to meet obligations to paying agents outside the state and any such transfer must meet the same bond requirements as set forth in this article.

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

The board of investments is authorized to pay for banking services, and services ancillary thereto, by either a compensating balance in a noninterest bearing account maintained at the financial institution provid-
If payment is made by a state warrant, the board of investments is authorized to establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking service provided to the state. All income earned by the investment pool shall be paid into a special account of the state board of investments to be known as the banking services account and shall be used solely for the purpose of paying for all banking services and services ancillary thereto, provided to the state.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

(a) "Board" means the West Virginia State Board of Investments.
(b) "Director" means the director of the governor's office of community and industrial development.
(c) "Eligible small business" means any business which employs two hundred or less employees or has gross annual receipts of four million dollars or less.
(d) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the linked deposit program.
(e) "Linked deposit" means a certificate of deposit placed by the state board of investments with an eligible lending institution at up to three percent below current market rates, as determined and calculated by the state board of investments, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided for by this article, to eligible small businesses at three percent below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses...
throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that such high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the linked deposit program to create an availability of lower-cost funds to inject needed capital into the business community, sustain or improve business profitability, protect the jobs of citizens of this state and assist businesses located in any county declared to be a federal disaster area by the Federal Emergency Management Agency. The Legislature further finds that the involvement of both the state board of investments and the director in determining which businesses will receive the benefits of the linked deposit program is necessary in order for state funds to be used in the most effective manner possible in assisting small businesses throughout the state and thereby maximizing the impact of the program.

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

(a) The state board of investments may invest in linked deposits: Provided, That at the time of the placement of the linked deposit not more than ten percent of the state’s total investment portfolio is so invested. The total amount so deposited at any one time shall not exceed, in the aggregate, two hundred twenty-five million dollars, of which fifty million dollars shall be provided for linked deposits to West Virginia flood victims from the twenty-nine counties eligible for federal disaster aid as listed by the federal emergency management agency: Provided, however, That after the first day of April, one thousand nine hundred eighty-seven, the state board of investments shall reserve ten million dollars of the unallocated aggregate for linked deposits to such West Virginia
flood victims and may use the remaining balance of
such unallocated moneys in the regular linked deposit
program: Provided further, That after the first day of
January, one thousand nine hundred eighty-eight, the
remaining balance of unallocated moneys may be used
in the regular linked deposit program: And provided
further, That effective the first day of July, one
dozen nine hundred ninety-one, the board of
investments may not invest in linked deposits until
such time as the board of investments has determined
that there are adequate funds available to meet the
needs of the education enhancement fund, as set forth
in section nine-d, article six of this chapter.

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

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

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

(b) An eligible small business shall certify on its loan
application that the reduced rate loan will be used
exclusively to create new jobs or preserve existing
jobs and employment opportunities. An eligible small
business shall make a sworn affidavit stating that the
reduced rate loan will not be used to refinance an
existing debt, unless it can be demonstrated to show
the business will fail if not granted such loan. Whoever
knowingly makes a false statement concerning such
application shall be prohibited from entering into the
linked deposit loan program.
(c) In considering which eligible small businesses should receive reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located, including whether the business is located in a county declared to be a federal disaster area by the Federal Emergency Management Agency, and the number of jobs to be created. If jobs are to be preserved by the receipt of such loan, the eligible lending institution shall decide between small businesses that had no profit in the last tax year verified by independent audit filed for relief under the federal bankruptcy laws in the past year or has been adversely affected by a nonreimbursed casualty loss due to a natural disaster. An eligible small business shall make a sworn affidavit stating that one of the above mentioned circumstances applies to their business. There shall also be a continuous internal audit conducted by the state board of investments which shall be made available to the Legislature annually.

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

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

(a) The board of investments may accept or reject a linked deposit loan package or any portion thereof, based on the ratio of state funds to be deposited to jobs sustained or created: Provided, That notwithstanding any provision of this article to the contrary, the board of investments may not accept any linked deposit loan package or any portion thereof unless the same has been reviewed and approved by the director in his sole discretion.
(b) The board of investments shall reject any linked deposit loan package if the small business requesting such loan is not in good standing with the state tax department, department of employment security and the workers' compensation fund, and these agencies shall provide the board of investments with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.

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

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

(2) The small business recently experienced a natural disaster and suffered unreimbursable casualty losses;

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

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

(d) Upon acceptance of the linked deposit loan package or any portion thereof by the board of investments and the director, the board of investments may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the board of investments. Upon acceptance of the linked deposit loan package for flood victims or any portion thereof, the board of investments may place certificates of deposit with the eligible lending institution at five percent below current market rates, as determined and calculated by the board of investments. When necessary, the board may place certificates of deposit prior to acceptance of a linked deposit loan package.
(e) The eligible lending institution shall enter into a deposit agreement with the board, which shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit and shall include provisions for the certificates of deposit to be placed for up to two-year maturities that may be renewed for up to an additional two years. Interest shall be paid at the times determined by the board.

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

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

(b) The board shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible lending institutions and eligible small businesses. The board and the industrial development authority shall notify each other at least quarterly of the names of the businesses receiving financial assistance from their respective programs.

By the first day of January, April, July and October of each year, the board shall report on the linked deposit program for the preceding calendar quarter to the governor and to the joint committee on govern-
ment and finance. The reports shall set forth the
linked deposits made by the board under the program
during the quarter and shall include information
regarding the nature, terms and amounts of the loans
upon which the linked deposits were based and the
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
to any eligible lending institution in any manner for
payment of the principal or interest on the loan to an
eligible small business. Any delay in payment or
default on the part of an eligible small business does
not in any manner affect the deposit agreement
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
statute to accept moneys due the state of West Virginia
shall keep a daily itemized record of such moneys so
received for deposit in the state treasury and shall
deposit within twenty-four hours with the state board
of investments all moneys received or collected by
them for or on behalf of the state for any purpose
whatsoever. The treasurer and the board of invest-
ments shall promulgate rules and regulations, in
accordance with the provisions of chapter twenty-
nine-a of this code governing the procedure for such
deposits.

13 The official or employee making such deposits with
the state board of investments shall prepare such
deposit lists in such manner and upon such report
forms as may be prescribed by the board of invest-
ments. Once the board has satisfied itself that all
deposits have been promptly prepared and deposited,
it shall transfer all such funds to a special bank
account of the state treasurer and provide him with
such deposit report. The original of this report shall
accompany the deposit to the treasurer. Certified or
receipted copies shall be immediately forwarded by
the state treasurer to the state auditor and to the
secretary of administration, and a copy shall be
provided to the board of investments. The original of
the deposit report shall become a part of the treasur-
er's permanent record.

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

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

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

(c) All endowment funds, bequests, donations, exec-
tutive emergency funds, and death and disability funds;

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

(e) All funds derived from collections from dormito-
ries, boardinghouses, cafeterias and road camps;

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

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

(h) All funds derived from bookstores and sales of
(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications and all funds and moneys payable to or received by the natural resources commission of West Virginia;

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

All moneys, excepted as aforesaid, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be recorded in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

The state board of investments shall have authority to establish an imprest fund or funds in the office of any state agency or institution making proper application to the board. To implement this authority the board shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code. The board or its designee shall annually audit all such funds and prepare a list of all such funds showing the location and amount as of fiscal year end, retaining such list as a permanent record of the board until such time as the legislative auditor shall have completed an audit of the imprest 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 statute to accept moneys due the state of West Virginia shall deposit such moneys in such manner as the board of investments shall direct and shall promptly transmit or cause to be transmitted such deposits, together with a certificate of deposit, as soon as practicable to the depository in which they desire to make the deposit, and shall retain and record the deposit lists.

§12-2-4. Duty of depositories.

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

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

1 When any payment of money has been made to the state for road bonds or other purposes outside of the state, the board of investments shall have authority to place the same to the credit of one or more state depositories in one or more of its correspondent banks located within or without the state. The board of investments shall, upon making such a deposit in such correspondent bank, secure from it a proper certificate of deposit certifying the amount and the name of the state depository to whose credit the deposit was made by the board of investments. The board of investments shall forward a copy of such certificate to the state depository receiving such deposit through its correspondent bank, and it shall be the duty of such depository immediately to issue to the state of West Virginia a proper certificate of deposit for the amount so deposited, dated the same day the deposit was made in such correspondent bank. Before making such deposit however, the board of investments shall secure written authority from such depository, designating
the name and address of its correspondent bank or
banks in which deposits are to be made and the
maximum amount to be deposited in each. The depos-
itory bonds of all state depositories so authorizing and
receiving such deposits in their correspondent banks
shall be liable for such deposits the same as if the
deposits had been made with them directly, whether
such bonds are so conditioned or not, and all deposi-
tory bonds hereafter issued shall so provide.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

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

Every person claiming to receive money from the
treasury of the state shall apply to the auditor for a
warrant for same. The auditor shall thereupon exam-
ine the claim, and the vouchers, certificates and
evidence, if any, offered in support thereof, and for so
much thereof as he shall find to be justly due from the
state, if payment thereof be authorized by law, and if
there be an appropriation not exhausted or expired
out of which it is properly payable, he shall issue his
warrant on the treasurer, specifying to whom and on
what account the money mentioned therein is to be
paid, and to what appropriation the same is to be
charged. On the presentation of such warrant to the
treasurer, he shall ascertain whether the same has
been drawn in pursuance of an appropriation made by
law, and if he finds it to be so, he shall in that case,
but not otherwise, endorse his check upon such
warrant, directed to some depository, which check
shall be payable to the order of the person who is to
receive the money therein specified; or he may issue
a bank wire in payment of such warrant. If such check
shall not be presented for payment within six months
after it is drawn, it shall then be the duty of the
treasurer to credit it to the depository on which it was
drawn, to credit the state fund with the amount, and
immediately notify the auditor to make corresponding
entries on his books. No state depository shall pay a
check unless it is presented within six months after it
is drawn and every check shall bear upon its face the
words, "Void, unless presented for payment within six
months." All claims required by law to be allowed by
any court, and payable out of the state treasury, shall
have the seal of the court allowing or authorizing the
payment of the same affixed by the clerk of such court
to his certificate of its allowance; and no such claim
shall be audited and paid by the auditor unless the seal
of such court be thereto attached as aforesaid. No tax
or fee shall be charged by the clerk for affixing his
seal to the certificate, referred to in this section. The
treasurer and the board of investments shall jointly
promulgate rules and regulations, in accordance with
the provision of chapter twenty-nine-a of this code
governing the procedure for such payments from the
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.

The governor shall promulgate rules and regulations
concerning out-of-state travel by state officials and
employees, except those in the legislative and judicial
branches of the state government and except for the
attorney general, auditor, secretary of state, treasurer,
board of investments and commissioner of agriculture
and their employees. The Legislature, the supreme
court of appeals and the attorney general, auditor,
secretary of state, treasurer, board of investments and
commissioner of agriculture shall promulgate rules
and regulations concerning out-of-state travel for their
respective branches and departments of state govern-
ment. Copies of such rules and regulations shall be
filed with the auditor, and the secretary of state. It
shall be unlawful for the auditor to issue a warrant in
payment of any claim for out-of-state travel expenses
incurred by a state officer or employee unless such
claim meets all the requirements of the rules and
regulations so filed.

Payment for dues or membership in annual or other
voluntary organizations shall be made from the proper
item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

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

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

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

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

(a) The state treasurer shall take all necessary actions to identify all unreconciled items on the bank accounts maintained by the state treasurer. All items identified on or before the thirtieth day of June, one
thousand nine hundred ninety, shall be recorded in
the state account(s) to which they have been identi-
fied. Any unreconciled items not identified on or
before the thirtieth day of June, one thousand nine
hundred ninety, shall be recorded in a special revenue
account known as the “single audit account.”

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

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

(d) Effective on the first day of July, one thousand
nine hundred ninety, the state treasurer shall take
action to ensure that all bank accounts of the state
treasurer are reconciled each month. If after six
months from receipt of a bank statement, any items
remain as unreconcilable, the state treasurer shall
record such amounts as a debit or credit to the state’s
general revenue fund. The board of investments shall keep in its office separate accounts with each depository and shall take action to ensure that all bank accounts of the board are reconciled each month. If after six months from receipt of a bank statement, any items remain as unreconcilable, the board shall record such amounts as a debit or credit to the state's general fund.

ARTICLE 5. PUBLIC SECURITIES.

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

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

The board of investments may by formal order of record fix fair and reasonable charges for the care, custody, exchange and substitution of securities deposited by insurance companies and companies issuing annuity contracts and such charges shall be collected from such companies by the state treasurer and deposited by him in the general revenue fund: Provided, That no such charge shall be made against any such company having securities of the par value of less than three hundred thousand dollars deposited hereunder.

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

It shall be the duty of the treasurer and the board of investments to keep an accurate account of all securities received by them respectively and collect and account for the interest as the same becomes due and payable and the principal whenever same is due.
§12-5-6. When notes deemed securities; appraisal.

(a) Whenever, by statute of this state, any public official, board, commission or department of this state is charged with the approval of securities required as collateral for the deposit of public or other funds, or required to be deposited with the state treasurer, or board of investments or an investment of capital or surplus or a reserve or other fund, is required to be maintained consisting of designated securities deposited with the board of investments, such securities shall, at the discretion of such public official, board, commission or department, be deemed to include and mean notes executed by the person or corporation required to make such deposit and made payable to the state of West Virginia upon demand, in the event of insolvency or default by such person or corporation, for the benefit of those for whom such securities are deposited, when such notes are secured by duly executed deeds of trust on improved, unencumbered real property located in the state and owned by the person or corporation executing such notes, said deeds of trust to be approved by the attorney general of the state as to sufficiency of form and manner of execution and accompanied by proper abstracts of title and fire insurance policies equal to the amounts of such notes and recorded among the land records of the county in which the real property is located: Provided, That whenever any such note so secured by a deed of trust on real property owned by any such person or corporation is approved by any public official, board, commission or department of this state, the real property shall have an appraised value of at least thirty per centum more than the amount of such note, said value to be determined by an appraisal of two landowners, who are citizens of this state and generally recognized as experienced real estate appraisers, appointed by the public official, board, commission or department, charged with the approval of such securities, the expenses of such appraisal to be borne by the person or corporation required to make such deposit, and each unit of such real property shall have an appraised value of at least fifty thousand dollars.
By improved real property as used herein is meant all real property within the limits of an incorporated city or town on which permanent buildings suitable for residential, industrial or commercial use are located.

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

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-1a. Legislative findings.

The Legislature finds and declares that teachers and other public employees throughout the state are experiencing economic difficulty and that in order to reduce this economic hardship on these dedicated public employees, and to help foster sound financial practices, the state board of investments is given the authority to develop, implement and maintain an efficient and modern system for the collection, disbursement, investment and management of the state's money. The Legislature further finds that in order to
implement these sound fiscal policies, the board of investment shall operate as an independent board with its own full-time staff of financial professionals immune to changing political climates, in order to provide a stable and continuous source of professional financial management.

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

(a) The governor shall be the chairman and the custodian of all funds, securities and assets held by the board. The board shall elect an executive secretary to serve for a term of six years, such election to be held at the board's first meeting after the first effective date of this article. Effective with any vacancy in the position of executive secretary, the board shall appoint an executive secretary to serve at the will and pleasure of the board, which executive secretary may not be a member of the board: Provided, That the executive secretary shall have at least a bachelor's degree in either business administration or accounting in an accredited program and/or have at least five years' experience in investment management or securities markets, said experience to have occurred within the ten years next preceding the date of appointment of the secretary: Provided, however, That the executive secretary may be paid a salary as determined by the board out of appropriations by the Legislature: Provided further, That the board shall appoint a staff to act for the board.

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

(c) Each member of the board shall give a separate and additional fidelity bond from a surety company qualified to do business within this state in a penalty amount of two hundred fifty thousand dollars for the faithful performance of his duties as a member of the board. In addition, the board will purchase a blanket bond for the faithful performance of its duties in the
amount of five million dollars excess of the two
hundred fifty thousand dollar individual bond
required of each member by the provisions of this
section. The board may require a fidelity bond from a
surety company qualified to do business in this state
for any person who has charge of, or access to, any
securities, funds or other moneys held by the board,
and the amount of such fidelity bond shall be fixed by
the board. The premiums payable on all fidelity bonds
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;
(10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of such securities by the board at a stated price;

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

(12) Enter into agreements with political subdivisions of the state whereby moneys of such political subdivisions are invested on their behalf by the board;

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

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

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

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

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

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

(b) There is hereby created in the state treasury a special revenue account to be known as the "loss expenses account". The purpose of this account is to provide funds to the board of investments to pay costs, fees and expenses incurred, or to be incurred, for the following: (1) Investigation and pursuit of claims
against third parties for the investment losses incurred during the period beginning the first day of August, one thousand nine hundred eighty-four and ending on the thirty-first day of January, one thousand nine hundred eighty-nine; (2) for consulting services regarding the restructuring of office of the treasurer following said losses; and (3) for implementation of the recommendations made as result of the consultations regarding restructuring. That special revenue account shall be funded by depositing income derived by the board from securities lending and recoveries from third parties. The board is authorized to deposit into the special revenue account, and to expend in accordance with the provisions of this section, those funds received from such recoveries and not more than two million dollars annually from income derived by the board from securities lending. Funds in the loss expense account in excess of reasonably estimated costs, fees and expenses for any fiscal year and any funds remaining in such special revenue account at the end of each fiscal year after expenditures, for the purposes specified above, may be transferred by the board to its “liquidity investment pool”, to be used, in such manner as the board determines, to eliminate the present imbalance in the state accounts caused by the investment losses described above in this subsection. The authority for this special revenue account expires on the thirtieth day of June, one thousand nine 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.

(a) The Legislature hereby finds and declares that the West Virginia supreme court of appeals has determined that public education has a constitutionally preferred status; that there is a large amount of investable funds in the consolidated pension fund; that loans made under commercially reasonable terms to finance needed public education improvements are
necessary investments in the future of West Virginia; and that loans from the consolidated pension fund will assist in financing the needs of primary and secondary education, without in any way impairing the solvency or financial soundness of the consolidated pension fund. This section is enacted in view of these findings.

(b) Whenever the governor determines that there are insufficient general revenue funds available for the timely payment for necessary improvements in public education as appropriated by the Legislature in the budget bills for the fiscal years one thousand ninety-one and one thousand ninety-two, the governor may request the state board of investments to lend those moneys necessary to meet such payment and the state board of investments shall transfer moneys from the consolidated pension fund to the special sinking fund account created in the state treasury by subsection (d) of this section, in the amount determined by the governor to be sufficient and necessary to meet such payments, within the amount determined by the board of investments to be prudently available. The manner and timing of such transfers shall be in the discretion of the board of investments. The total of the amounts transferred may not exceed a total of one hundred million dollars during the fiscal years one thousand ninety-one and one thousand ninety-two. On the date the loan is transferred to the special sinking fund created in subsection (d) of this section, interest shall accrue at the current interest rate of the fund from which the loan originated, plus one-fourth of one percent, and the current interest rate shall be recalculated every six months.

(c) Full repayment of all moneys transferred, with interest, shall be made to the board of investments by payment into such pension fund from amounts appropriated by the Legislature or in the absence of appropriations from the amounts specified in section thirty, article fifteen, chapter eleven of this code, by budget action as first priority from the moneys available for each fiscal year. Repayment of the loans
shall begin six months from the date the funds were transferred and payments shall be made every six months thereafter, or sooner if agreed to in writing by the board of investments and the governor: Provided, That all loans shall be repaid in full by the last day of August, one thousand nine hundred ninety-six.

(d) There is hereby created in the state treasury a special account, designated the "Education Enhancement Fund", which is a sinking fund for the deposit, withdrawal and repayment of moneys transferred pursuant to this section and section thirty, article fifteen, chapter eleven of this code, in accordance with the special fund doctrine for budgetary transfer activities involving more than one fiscal year. Management of such fund shall be a responsibility of the board of investments. If any moneys remain in said fund after repayment in full to the appropriate pension fund or funds, such moneys shall be transferred to the general revenue fund within thirty days of the last repayment.

(e) Upon the written request of the governor, the board of investments shall transfer to the general revenue fund, from the funds available in the educational enhancement fund, those funds necessary for the timely payment for necessary improvements in public education as appropriated by the Legislature.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.


If three-fifths of all the votes cast for and against the proposition to incur debt and issue negotiable bonds shall be in favor of the same, the governing body of the political division shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount stated in the proposition; fix the date thereof; set forth the denominations in which they shall be issued, which denominations shall be one hundred dollars or multiples thereof; determine the rate or
rates of interest which the bonds shall bear, which rate or rates of interest shall be within the maximum rate stated in the proposition submitted to vote and payable semiannually, prescribe the medium with which the bonds shall be payable; require that the bonds shall be made payable at the office of the state board of investments and at such other place or places as the body issuing the same may designate; provide for a sufficient levy to pay the annual interest on the bonds and the principal at maturity; fix the times within the maximum period, as contained in the proposition submitted to vote, when the bonds shall become payable, which shall not exceed thirty-four years from the date thereof; and prescribe a form for executing the bonds authorized.

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

The bonds issued hereunder may be registered or coupon bonds. Coupon bonds may be registered as to the principal in the owner's name by the state board of investments on books which shall be kept at its office for the purpose and the registration shall also be noted on the bonds, after which no transfer shall be valid unless made by the state board of investments on the books of registration and similarly noted on the bonds. Bonds registered as to principal may be discharged from registration by being transferred to bearer, after which they shall be transferable by delivery; but may again, and from time to time, be registered as to the principal amount as before. The registration of coupon bonds as to the principal sum shall not affect the negotiability of the interest coupons, 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.

Coupon bonds may also be registered as to the interest by the holder surrendering the bonds with the unpaid coupons attached, which bonds and coupons shall be canceled by the state board of investments. New bonds of the same date and tenor and for the
same amounts as the bonds surrendered, or, at the
option of the holder, a single bond for the aggregate
amount of the bonds surrendered, but without interest
coupons attached, shall be issued in the place of the
coupon bonds and registered in the manner required
in the preceding section. A registered bond may at any
time be surrendered and be exchanged by the holder
for a coupon bond by the holder delivering the
registered bond to the state board of investments who
shall cancel the same and who shall cause a new bond
of the same date and tenor and for the same amount
to be issued, and with interest coupons for the interest
thereafter to accrue thereon attached, and deliver the
same to the holder of the surrendered bond. The
governing body of the county, municipal corporation
or school district which issued the original bond shall
issue and execute the new bond required by this
section and shall pass the resolutions and ordinances
necessary to authorize the same. The expense of such
registration shall in all cases be paid by the holder of
the bonds.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

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

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

The plan of support for the public schools, which
will be known as the West Virginia public school
support plan, will fix statutorily both state and county
responsibility for the financing of the same. In enact-
ing this plan, the Legislature has in mind the following 
purpose: To effect a basic foundation support plan that 
shall provide for program growth which will assure 
more equitable educational opportunity for all chil-
dren and youth irrespective of where they may live.

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

The basic foundation allowance to the county for 
professional educators shall be the amount of money 
required to pay the state minimum salaries, in accor-
dance with provisions of article four, chapter eighteen-
a of the code, to such personnel employed: Provided, 
That in making this computation no county shall 
receive an allowance for such personnel which num-
ber is in excess of fifty-four and thirty-three one-
hundredths professional educators to each one thou-
sand students in adjusted enrollment: Provided, 
however, That for the school year commencing on the 
first day of July, one thousand nine hundred ninety-
one and thereafter, no county shall receive an allow-
ance for such personnel which number is in excess of 
fifty-three and one-half professional educators to each 
one thousand students in adjusted enrollment: Pro-
vided further, That any county not qualifying under 
the provision of section fourteen of this article shall be 
eligible for a growth rate in professional personnel in 
any one year not to exceed twenty percent of its total 
potential increase under this provision, except that in 
no case shall such limit be fewer than five profession-
als: And provided further, That the number of and the 
allowance for personnel paid in part by state and 
county funds shall be prorated: And provided further, 
That where two or more counties join together in 
support of a vocational or comprehensive high school 
or any other program or service, the professional 
educators for such school or program may be prorated 
among the participating counties on the basis of each 
one's enrollment therein and that such personnel shall 
be considered within the above-stated limit: And 
provided further, That in the school year beginning 
the first day of July, one thousand nine hundred 
eighty-eight, and in each school year thereafter, each
county board shall establish and maintain a minimum ratio of fifty professional instructional personnel per one thousand students in adjusted enrollment: And provided further, That no county shall have less than a total of five principals and central office administrators. Any county board which does not establish and maintain this minimum ratio shall suffer a pro rata reduction in the allowance for professional educators under this section, and, further, any county board which does not establish and maintain this minimum ratio shall utilize any and all allocations to it by provision of section fourteen of this article solely to employ professional instructional personnel until the minimum ratio is attained. Every county shall utilize methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section. It is the intent of the Legislature that in planning reductions in force to comply with reduced ratios of professional educators to students in adjusted enrollment, county boards shall consider positions for elimination in the following order: (1) Central office administrators, (2) assistant principals, and (3) principals.

No county shall increase the number of administrative personnel employed as either professional educators or pay grade “H” service personnel above the number which were employed, or for which positions were posted, on the thirtieth day of June, one thousand nine hundred ninety, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts: Provided, That the governor shall submit a recommendation to the Legislature at the beginning of the regular session thereof in the year one thousand nine hundred ninety-one, which proposes a method for establishing a responsible level of administrative support for each county school system and a pay scale differentiation on a daily rate between classroom positions and administrative positions when all other factors are equal.
Every county board of education shall annually determine the number of professional educators employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplement that would be available per state authorized employee if all expenditures for such excess employees were converted to annual salaries for state authorized professional educators within their county. Such information shall be published annually 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.

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

(b) Commencing with the school year one thousand nine hundred eighty-nine—ninety, and each year thereafter, in computing the basic foundation allowance to a county for professional educators and the basic foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for such personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Maximum professional educators per 1000 net enrollment</th>
<th>Maximum service personnel per 1000 net enrollment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989-90</td>
<td>76.5</td>
<td>45.5</td>
</tr>
</tbody>
</table>
(c) Every county shall utilize methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

(d) For the school years one thousand nine hundred eighty-nine—ninety and one thousand nine hundred ninety-one only, if a school district loses more than six percent of the number chargeable for the previous school year for professional educator positions or service personnel positions, due to the maximum ratios established in subsection (b) of this section, it may apply to the state board for a waiver of said ratios to the extent that the loss exceeds either six percent of its professional educators or service personnel: Provided, That the county board of education establishes and maintains the minimum ratio of professional instructional personnel per one thousand students in adjusted enrollment as required in section four of this article. Waivers shall be determined on a case by case basis according to rules adopted by the state board and granted to the extent funds are appropriated by the Legislature for this purpose. Prior to the adoption of such rules, the state board shall conduct a thorough review of the staffing patterns in each county. Any personnel positions funded as a result of a waiver granted under the provisions of this subsection shall not be included in the computations set forth in sections four and five of this article.


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

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

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

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

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

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

For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, and for each fiscal year thereafter, the foundation allowance for regional educational service agencies shall be equal to sixty-three one hundredths percent of the allocation for professional educators as determined in section four of this article. The allowance shall be distributed to the regional educational service agencies in accordance with rules adopted by the state board. The allowance for regional educational service agencies shall be excluded from the computation of total basic state aid as provided for in section twelve of this article.

§18-9A-9. Foundation allowance for other current expense and substitute employees.
The total allowance for other current expense and substitute employees shall be the sum of the following:

Provided, That each of the three amounts set forth in subparagraphs (1), (2) and (3) of this section shall not exceed the preceding year's allowance by more than four percent.

(1) For current expense, for the year one thousand nine hundred ninety-nine and thereafter, ten percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article. Distribution to the counties shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment; plus

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

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

(4) For academic materials, supplies and equipment for use in instructional programs, two hundred dollars multiplied by the number of professional instructional personnel employed in the schools of the county. Distribution shall be made to each county for allocation to the faculty senate of each school in the county on the basis of two hundred dollars per professional instructional personnel employed at the school. Faculty senate means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for
the expenditure of such funds shall be made at the
school level by the faculty senate in accordance with
the provisions of said section five, article five-a, and
shall not be used to supplant the current expense
expenditures of the county.

(5) For the school year one thousand nine hundred
ninety-ninety-one only, there shall be a one-time
additional appropriation of five hundred thousand
dollars to be distributed to the counties on a needs
basis. Funds shall be distributed to those very few
counties in which costs for the delivery of educational
services are extraordinarily greater than in the vast
majority of counties, thus impairing the quality of
education in those few counties. The factors used to
determine eligibility for funds shall be sparsity of
student population, combined with geographical barri-
ers to the efficient transportation of students; or
extraordinary growth in net enrollment for school
year one thousand nine hundred ninety-nine only
which exceed the allowance for increased enrollment
appropriated in the budget for that year. Prior to the
distribution of funds, the state superintendent shall
establish that the applying county has demonstrated
efficiency and fiscal responsibility in staffing, and in
maximum sharing of services with adjoining counties
and the regional educational service agency for that
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
first day of July, one thousand nine hundred ninety-
one and thereafter, funds which accrue from alloca-
tions due to changes in adjusted enrollment above that
computed for each preceding school year shall be
allocated in the following manner:

(1) Up to eighty percent of these funds shall be
allocated for the purpose of attaining salary equity
among the counties pursuant to section five, article
four, chapter eighteen-a, except that for the school
year commencing on the first day of July, one thou-
sand nine hundred ninety only, the allocation to salary equity shall be made in accordance with the provisions of section five-d, article four, chapter eighteen-a of this code;

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

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


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

Upon determination of the several increases in the respective counties' net enrollments, as of the close of the second school month, each county showing such increase shall be allocated an amount equal to that county's average per net pupil total state aid multiplied by the increase in that county's net enrollment determined as provided heretofore. Such allocations shall be distributed not later than the thirty-first day of December of each year to the counties having increases in net enrollment as heretofore provided. If the amount appropriated for this purpose shall not be sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the
appropriation compared to the total of the several allocations, and the allocations as thus adjusted shall be distributed to the counties as provided in this section: Provided, That the governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.


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

(a) "Board" or "governing board" means the University of West Virginia board of trustees or the board of directors of the state college system, whichever is applicable within the context referred to in this article, unless the context clearly indicates a different meaning.

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

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

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

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

(3) Is currently enrolled in good standing or accepted for enrollment at the approved institution of higher education in this state of the student's choice; and
(4) Is certified by such institution in accordance with section three of this article.

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

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

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

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

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

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from applicants certified as eligible students. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible student. In no case shall the applicant request, nor the eligible lending institution approve, an annual loan amount in excess of the maximum amount indicated on the form certifying such applicant as an eligible student.
(b) An eligible student shall certify on the loan application that the reduced rate loan will be used exclusively to attend an approved institution of higher education in this state. Whoever knowingly makes a false statement concerning such application shall be prohibited from entering into the West Virginia higher education student assistance loan program. Whoever knowingly uses loan proceeds received pursuant to this article for reasons other than attendance at an approved institution of higher education shall be prohibited from benefitting from the linked deposit, which deposit shall be withdrawn upon maturity, and the loan shall revert to the rate of market interest originally determined.

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

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

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

(b) The eligible lending institution shall enter into a
deposit agreement with the state board of investments, which shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution’s lending area. The agreement may include a specification of the period of time in which the eligible lending institution is to lend funds after the placement of a linked deposit and shall include provisions for the certificates of deposit to be placed for up to two-year maturities that may be renewed for period up to two years until such time as the loan has been completely repaid, or ten and one-half years after the eligible student’s cessation of enrollment in the approved institution of higher education to which the loan proceeds were paid, whichever is sooner. Interest shall be paid at the times determined by the state board of investments.

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

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

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

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

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

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST ACT.

§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.

(a) The board of directors shall consist of the secretary of education and the arts, who shall be the chairman of the board, the executive secretary of the state board of investments, and the state superintendent of schools, who shall serve as ex officio voting members of the board, and six other members with knowledge, skill and experience in an academic, business or financial field, who shall be residents of the state appointed by the governor, by and with the advice and consent of the senate. Of the six appointed members, four shall be appointed from nominations as follows: One shall be a private citizen not employed by or an officer of the state or any political subdivision thereof appointed from one or more nominees of the speaker of the house of delegates; one shall be a private citizen not employed by or an officer of the state or any political subdivision thereof appointed from one or more nominees of the president of the senate; one shall be a president of a state institution of higher education who shall be appointed from one or more nominees of the council of presidents of state colleges and universities; and one shall represent the interests of private institutions of higher education located in this state who shall be appointed from one
or more nominees of the West Virginia association of private colleges. Of these six members first appointed, two shall be appointed for terms that expire on the thirty-first day of December, one thousand nine hundred eighty-nine, two shall be appointed for terms that expire on the thirty-first day of December, one thousand nine hundred ninety, and two shall be appointed for a term that expires on the thirty-first day of December, one thousand nine hundred ninety-one. Following the expiration of these fixed terms, a member shall be appointed for a term of three years. A member shall serve until a successor is appointed, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The secretary of education and the arts, executive secretary of the state board of investments, state superintendent or president of a state institution of higher education may appoint a designee to serve as a voting member of the board in such person's absence.

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

(c) A majority of the voting members appointed to the board shall constitute a quorum for the transaction of business at a meeting of the board, or the exercise of a power or function of the trust, notwithstanding the existence of one or more vacancies. Voting upon action taken by the board shall be conducted by majority vote of the members present in person at a meeting of the board, and, if authorized by the bylaws of the board and when a quorum is present in person at the meeting, by use of amplified telephonic equipment. The board shall meet at the call of the chairman and as may be provided in its bylaws. Meetings of the board may be held anywhere within the state.

(d) The board is subject to the open governmental proceedings and freedom of information provisions of 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
experience of a teacher or a nurse shall be limited to
that allowed under their training classification as
found in the minimum salary schedule.

(2) “Fourth class” means all certificates previously
identified as (a) “certificates secured by examination”,
and (b) “other first grade certificates”.

(3) “Third class” means all certificates previously
identified as (a) “standard normal certificates” and (b)
“third class temporary (sixty-four semester hours)
certificates”.

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

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

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

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

(8) “M.A. plus 15” means the above-defined master’s
degree plus fifteen hours of graduate work, earned in
an institution of higher education approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

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

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

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

In-field master's compensation is contingent upon recognition of the in-field master's classification and the educator's assignment. The West Virginia board of education shall establish regulations for the administration and implementation of the in-field master's salary schedule.

Only those professional educators who are assigned to teach, for a minimum of fifty (50) percent of the instructional day, subjects which are consistent with the endorsement(s) recognized as meeting the in-field master's classification shall be eligible for compensation based on the in-field master's schedule. If scheduling constraints prevent the educator from being
assigned to endorsements recognized for the in-field master's classification for a minimum of fifty (50) percent of the instructional day, the educator may petition the county board of education for such compensation. After review, the county board of education shall submit the petition to the state department of education on behalf of the educator for determination of in-field master's compensation. Such petitions must be filed on an annual basis.

If a professional educator, who was previously employed in an area recognized for in-field master's classification, is reassigned to work full-time in an area not recognized on said educator's certificate for in-field master's classification as a result of (1) voluntary reassignment to assist the county in meeting a critical staffing need or (2) a reduction in force, the educator may petition the county board of education for continued payment under the in-field master's salary schedule. After review, the county board of education shall petition the state department of education on an annual basis to continue such payment. In no case shall approval be granted for more than three years. The county board of education must provide documentation to justify each request.

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

The appropriate governing board of higher education shall develop a plan to provide "MA" classification programs to professional educators throughout this state by the first day of January, one thousand nine hundred ninety-one, with the objective being to provide course work enabling professional educators to achieve an "MA" degree classification in their teaching field.

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

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

(a) Twenty-four (24) semester hours of post baccalaureate graduate credit, within or external to the advanced degree, confined to one specialization completed at the undergraduate level on the educator's professional certificate or its equivalent, or

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

(c) Twelve (12) semester hours of graduate credit above and beyond the course work completed for the endorsement recognized for in-field master's classification only if the course work for the endorsement was also completed at the graduate level: Provided, That in certification areas where the total course work requirements for initial certification exceed the minimum required for in-field classification, the state 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. | A.B. +15 | M.A. |
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 |
Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. Such payments shall be in addition to any amounts prescribed in the "1990-91
state minimum salary schedule”, shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

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

1991-92 STATE MINIMUM SALARY SCHEDULE

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

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

Effective the first day of July, one thousand nine hundred ninety-two and thereafter, each teacher shall receive the amount prescribed in the “1992-93 state minimum salary schedule” as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.
### 1992-93 State Minimum Salary Schedule

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

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

(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, such difference shall be calculated utilizing the average of the professional educator salary schedules, degree classifications B.A. through Doctorate and years of experience zero through twenty, in effect in the five counties offering the highest salary schedules compared to the lowest such salary schedule in effect among the fifty-five counties. In the case of school service personnel, such difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades “A” through “H” and years of experience zero through thirty, in effect in the five counties offering the highest such salary schedules compared to the lowest such salary schedule in effect among the fifty-five counties.

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

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

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

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

No county may reduce any salary supplement that
was in effect on the first day of January, one thousand
nine hundred eighty-four, except as permitted by
§18A-4-5a. County salary supplements for teachers.

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

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

Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state teachers retirement system. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January one, one thousand nine hundred eighty-four, by any county board of
§18A-4-5b. County salary supplements for school service personnel.

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article. These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred ninety, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

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

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

Notwithstanding any other provisions of this code to the contrary, for the fiscal year beginning on the first day of July, one thousand nine hundred ninety only,
not less than twenty-seven million four hundred thousand dollars shall be appropriated and expended for salary equity among the counties in addition to such amounts as were expended for such purpose prior to the effective date of this section: Provided, That for professional educators each person shall receive a minimum salary equity adjustment of five hundred thirty-five dollars per year and that for service personnel each person shall receive a minimum salary equity adjustment of twenty dollars per month: Provided, however, That beginning on the first day of July, one thousand nine hundred ninety, such minimum salary equity adjustments shall be paid through the appropriate salary schedules pursuant to sections two and eight-a of this article: Provided further, That the remainder of the equity money shall be distributed as directed in section five of this article: And provided further, That an adequate amount of such funds shall be reserved to finance the appropriate foundation allowances for fixed charges as provided for in section six, article nine-a, chapter eighteen of this code: And provided further, That notwithstanding the provisions of said sections five and five-c of this article, foundation allowances other than for fixed charges shall not be financed from such funds.

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

The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month employment term shall not exceed forty-three weeks. Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.
Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

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

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

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

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

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

The column heads of the state minimum pay scale
and class titles, set forth in section eight-a of this article, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

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

"Class title" means the name of the position or job held by service personnel.

"Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

"Accountant III" means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

"Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title shall be employed as an aide in any special education program.
“Aide III” means those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education.

“Aide IV” means personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.

“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

“Braille or sign language specialist” means personnel employed to provide braille and/or sign language assistance to students.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

“Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

“Cabinetmaker” means personnel employed to construct cabinets, tables, bookcases and other
“Cafeteria manager” means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

“Carpenter I” means personnel classified as a carpenter's helper.

“Carpenter II” means personnel classified as a journeyman carpenter.

“Chief mechanic” means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

“Clerk I” means personnel employed to perform clerical tasks.

“Clerk II” means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

“Computer operator” means qualified personnel employed to operate computers.

“Cook I” means personnel employed as a cook's helper.

“Cook II” means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a “Cook I” for a period of four years, if such personnel have not been elevated to this classification within that period of time.

“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

“Crew leader” means personnel employed to organize the work for a crew of maintenance employees to
carry out assigned projects.

"Custodian I" means personnel employed to keep buildings clean and free of refuse.

"Custodian II" means personnel employed as a watchman or groundsman.

"Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

"Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "Custodian III", their duties may include supervising other custodian personnel.

"Director or coordinator of services" means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

"Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings.

"Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

"Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

"Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment.

"Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment.

"Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.
“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

“Foremen” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

“Graphic artist” means personnel employed to prepare graphic illustrations.

“Groundsmen” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.

“Heating and air conditioning mechanic I” means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“Heating and air conditioning mechanic II” means 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
“Multi-classification” means personnel employed to perform tasks that involve the combination of two or more class titles in this section or as created by the West Virginia board of education. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including but not limited to facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.
“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

“Secretary I” means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

“Secretary III” means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transpor-
tation, food services, operations and health depart-
ments, federal programs or departments with particu-
lar responsibilities of purchasing and financial control
or any personnel who have served in a position which
meets the definition of "secretary II" or "secretary
III" herein for twelve years.

"Supervisor of maintenance" means skilled person-
nel not defined as professional personnel or profes-
sional educators as in section one, article one of this
chapter. The responsibilities would include directing
the upkeep of buildings and shops, issuing instructions
to subordinates relating to cleaning, repairs and
maintenance of all structures and mechanical and
electrical equipment of a board of education.

"Supervisor of transportation" means qualified
personnel employed to direct school transportation
activities, properly and safely, and to supervise the
maintenance and repair of vehicles, buses, and other
mechanical and mobile equipment used by the county
school system.

"Switchboard operator-receptionist" means person-
nel employed to refer incoming calls, to assume
contact with the public, to direct and to give instruc-
tions as necessary, to operate switchboard equipment
and to provide clerical assistance.

"Truck driver" means personnel employed to oper-
ate light or heavy duty gasoline and diesel-powered
vehicles.

"Warehouse clerk" means personnel employed to be
responsible for receiving, storing, packing and shipping
goods.

"Watchman" means personnel employed to protect
school property against damage or theft. Additional
assignments may include operation of a small heating
plant and routine cleaning duties.

"Welder" means personnel employed to provide
acetylene or electric welding services for a school
system.
In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

The state board of education is authorized to establish other class titles of service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale in section eight-a of this article.

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a 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 subse-
quent 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.

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<th>STATE MINIMUM PAY SCALE PAY GRADE</th>
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<thead>
<tr>
<th>CLASS TITLE</th>
<th>PAY GRADE</th>
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<td>Accountant I</td>
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<td>Accountant II</td>
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<td>Accountant III</td>
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<td>Aide I</td>
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<td>Aide III</td>
<td>C</td>
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<td>Aide IV</td>
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<td>Audiovisual Technician</td>
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<td>Auditor</td>
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<td>Braille or Sign Language Specialist</td>
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<td>Bus Operator</td>
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<td>Buyer</td>
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<td>Cabinetmaker</td>
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<td>Cafeteria Manager</td>
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<td>Carpenter I</td>
<td>E</td>
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<td>Carpenter II</td>
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<td>Chief Mechanic</td>
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<td>Clerk I</td>
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<td>Clerk II</td>
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<td>Cook I</td>
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<td>Cook II</td>
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<td>Crew Leader</td>
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<td>Custodian II</td>
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<td>Custodian III</td>
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<td>Custodian IV</td>
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<td>Director or Coordinator of Services</td>
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<td>Draftsman</td>
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<td>Electrician I</td>
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<td>Electrician II</td>
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<td>Code</td>
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<td>70</td>
<td>Electronic Technician I</td>
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<td>71</td>
<td>Electronic Technician II</td>
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<td>72</td>
<td>Executive Secretary</td>
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<td>73</td>
<td>Food Services Supervisor</td>
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<td>74</td>
<td>Foreman</td>
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<td>75</td>
<td>General Maintenance</td>
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<td>76</td>
<td>Glazier</td>
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<td>77</td>
<td>Graphic Artist</td>
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<td>Groundsman</td>
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<td>79</td>
<td>Handyman</td>
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<td>Heating and Air Conditioning Mechanic I</td>
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<td>81</td>
<td>Heating and Air Conditioning Mechanic II</td>
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<td>82</td>
<td>Heavy Equipment Operator</td>
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<td>83</td>
<td>Inventory Supervisor</td>
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<td>84</td>
<td>Key Punch Operator</td>
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<td>Locksmith</td>
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<td>Lubrication Man</td>
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<td>87</td>
<td>Machinist</td>
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<td>88</td>
<td>Mail Clerk</td>
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<td>89</td>
<td>Maintenance Clerk</td>
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<td>90</td>
<td>Mason</td>
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<td>91</td>
<td>Mechanic</td>
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<td>92</td>
<td>Mechanic Assistant</td>
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<td>93</td>
<td>Office Equipment Repairman I</td>
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<td>94</td>
<td>Office Equipment Repairman II</td>
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<td>95</td>
<td>Painter</td>
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<td>96</td>
<td>Paraprofessional</td>
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<td>97</td>
<td>Plumber I</td>
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<td>98</td>
<td>Plumber II</td>
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<td>99</td>
<td>Printing Operator</td>
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<td>100</td>
<td>Printing Supervisor</td>
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<td>101</td>
<td>Programmer</td>
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<td>102</td>
<td>Roofing/Sheet Metal Mechanic</td>
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<td>103</td>
<td>Sanitation Plant Operator</td>
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<td>104</td>
<td>School Bus Supervisor</td>
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<tr>
<td>105</td>
<td>Secretary I</td>
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<td>Secretary II</td>
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<td>107</td>
<td>Secretary III</td>
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<td>108</td>
<td>Supervisor of Maintenance</td>
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<td>109</td>
<td>Supervisor of Transportation</td>
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<td>110</td>
<td>Switchboard Operator-Receptionist</td>
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<tr>
<td>111</td>
<td>Truck Driver</td>
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</tbody>
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On and after the first day of July, one thousand nine hundred ninety, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade" set forth in this section, and an additional ten dollars per month shall be added to the minimum monthly pay if the service employee holds a high school diploma or its equivalent.

Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times such employee’s usual hourly rate.

Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for such additional hours or fraction thereof at a rate of one and one-half times their usual hourly rate and paid entirely from county board of education funds.

No service employee shall have his or her daily work schedule changed during the school year without such employee’s written consent, and such employee’s required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

The minimum pay for extra-duty assignments as defined in section eight-b of this article, that are beyond the normal working day, shall be no less than one-seventh of the employee’s daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds. The salary for any fraction of an hour the employee is
involved in performing the assignment shall be pro-rated accordingly. When performing extra-duty assign-
ments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra-duty assignment pay computed as though such an employee were employed on a full-day salary basis.

§18A-4-9. Payment of teachers and other employees; withholdings.

Teachers and all other employees whose salaries or wages are payable out of the school current fund shall be paid for their services by orders duly signed by the president and secretary of the board in accordance with the following provisions: Notwithstanding any other provisions of this chapter and chapter eighteen, the number of pays to be made during the school year to the various classes of employees shall be determined by the board: Provided, That the sum of such pays for any employee does not exceed the equivalent of an annual salary based upon twelve calendar months. In the event a teacher or other employee is not paid the full salary or wage earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year. Adjustments for time loss due to absence may be made in the next pay check following such time loss.

The county board may withhold the pay of any teacher or employee until he has made the reports required by the board or the state superintendent.

Accompanying the pay of each employee shall be an accounting of gross earnings, all withholdings and the dollar value of all benefits provided by the state on 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.
(a) The Legislature hereby finds and declares that the state of West Virginia has been a major supplier of coal to the electric power industry both within and outside of the state of West Virginia; the congress of the United States is currently considering legislation to limit the emissions of oxides of sulfur and nitrogen from coal fired electric generating plants; the continued use of coal for generating electrical energy can be accomplished in an environmentally acceptable manner through the use of current state of the art and emerging clean coal and clean air technology; it is in the interest of the economy of West Virginia to encourage the use of such technologies for the production of electricity and steam; revenues from the continued production of coal are important to the state of West Virginia and are necessary for the funding of education and other vital state services; the construction of electric utility generation and transmission facilities may continue for many years following the finalization of plans for such facilities; and the prudence of the construction of such facilities may be affected by changing conditions during the extended interval between finalization of plans and completion of construction.

(b) Upon a finding that it is in the public interest of this state, as provided in section one, article one of this chapter, the public service commission shall authorize rate-making allowances for electric utility investment in clean coal and clean air technology facilities or electric utility purchases of power from clean coal technology facilities located in West Virginia which shall provide an incentive to encourage investments in such technology.

(c) For purposes of this section a qualified clean coal or clean air technology facility must use coal produced in West Virginia for no less than seventy-five percent of its fuel requirements.

(d) The public service commission shall determine, at such time and in such proceeding, form and manner as is considered appropriate by the commission, the extent to which any electric utility investment or
purchases of power qualify for incentive rate making pursuant to this section.

§24-2-11b. Continuing prudence reviews.

(a) If, in granting a certificate of convenience and necessity for the construction of an electric utility generating plant, a facility to comply with the federal Clean Air Act, as amended, or transmission line, the commission determines that the completion date for such plant or line is more than one year from the date of the order granting the certificate, the commission may require that such construction project or projects be subject to a continuing prudence review pursuant to this section.

(b) If the commission determines that continuation of a certificate subject to a continuing prudence review is not warranted or that the certificate should be amended, it may rescind or modify its authorization for construction.

(c) The commission shall promulgate such rules and regulations as it determines are necessary for the administration of this section. The commission shall specify, either by rule or for a specific certificated project, the frequency of each prudence review, the rate-making treatment to be afforded partially completed projects, and such other terms and conditions as it determines are reasonable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick J. Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

In effect from passage.

Russell E. Echols  
Clerk of the Senate

Donald D. Kopp  
Clerk of the House of Delegates

Keith Brindisi  
President of the Senate

Richard C. Corcoran  
Speaker House of Delegates

The within is approved this the 5th day of September, 1990.

Governor