

**WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1990**



**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 320**

(By Senator *Penhale, Jr. President* and *Warman*,  
*By request of the Executive*)



**PASSED** *March 10,* 1990  
In Effect *July 1, 1990* **Passage**

*No. 320*

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 320**

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

[Passed March 10, to take effect July 1, 1990.]

AN ACT to repeal article eight, chapter five; sections two-a, two-b and two-c, article one, sections nineteen-a, thirty-five and thirty-six, article two, section fourteen-a, article three, sections one-a, six and seven, article four, article four-a, sections four and five, article five, and section three-a, article eight, all of chapter five-a; to amend and reenact sections three, four and seven, article six; chapter five; to amend and reenact sections one, two, three, four, five and six, article one, chapter five-a; to further amend said article one by adding thereto two new sections, designated sections seven and eight; to amend and reenact article one-a, chapter five-a; to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, article two, chapter five-a; to further amend said article by adding thereto two new sections, designated sections ten

and eleven; to amend and reenact sections one, two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six and forty-seven, article three, chapter five-a; to further amend said article by adding thereto eleven new sections, designated sections one-a, seven, twenty-three, thirty-seven-a, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three and fifty-four; to amend and reenact article three-a, chapter five-a; to amend and reenact sections one, two, three, four and five, article four, chapter five-a; to amend and reenact sections one, two and three, article five, chapter five-a; to amend and reenact sections one, two, three, four, five, six, seven and eight, article seven, chapter five-a; to further amend said article by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections one, two, three, four, five, six and seven, article eight, chapter five-a; to further amend said article by adding thereto twelve new sections, designated sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen; to amend and reenact section three, article nine, chapter five-a; to amend and reenact section seventeen, article three, chapter twelve; to amend and reenact section one, article three, chapter fourteen; and to amend and reenact sections seven and twenty-three, article six, chapter twenty-nine, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the reorganization of the department of administration; deleting prohibition against state building commission charging rent to general revenue agencies; powers of state building commission; contracts with state building commission over ten thousand dollars to be by competitive bids; definitions for chapter relating to department of administration; division of finance and administration abolished transfer of duties and responsibilities to

department of administration; divisions; division directors; powers and duties of secretary, division heads and employees; council of finance and administration; reports by secretary; bonds for director of purchasing, buyers and employees; cost of bonds; delegation of powers and duties by secretary; right of appeal from interference with functioning of agency to governor; employee suggestion award program; employee suggestion award board and term of members; duties of board and employees eligible for award; increasing maximum award; state ownership of suggestions; finance division created; director; budget and accounting sections created; powers and duties; general powers and duties of secretary of administration as director of budget; requests for appropriations; copies to legislative auditor and sanctions; request provision for state superintendent of schools; contents of requests for appropriation; form of requests for appropriations; secretary to ascertain information concerning state finances; judiciary appropriations; secretary to examine requests for appropriation; appropriation requests by other than spending units to be no later than September first each year; secretary to supervise and control expenditure of appropriations, except those made to the judicial and legislative branches; secretary to estimate revenues month by month; secretary to ascertain revenue collections in proportion to estimate; withholding department of administration funds if secretary fails to provide information; submission of expenditure schedules to secretary; contents of expenditure schedules; copies of expenditure schedule to legislative auditor and sanctions; secretary to examine and approve expenditure schedules and amendments; legislative auditor to receive copies of expenditure schedules and amendments; secretary may require a reserve for emergencies out of the total appropriation to spending unit; requests for quarterly allotments in accordance with approved expenditure schedules; governor to approve or reduce amount of allotments; limitation on expenditures during a quarter; effectuating transfers between line items; expenditure of excess collections; approval by governor and notices to auditor, treasurer and legisla-

tive auditor; spending units to report work and expenditures to secretary; secretary to send copies to legislative auditor; power of governor to reduce appropriations; governor to reduce prorata appropriations from general revenue to prevent overdraft or deficit; governor to reduce prorata appropriations from other funds; secretary to approve requests for changes, receipt and expenditure of federal funds; legislative auditor to receive copies; secretary to submit consolidated report to governor and legislative auditor of all federal funds; secretary to formulate management accounting system; system to include accounts kept by secretary, auditor and treasurer; governor to approve system; system to be certified to legislative auditor; expenditure of appropriations; expenditure of appropriations other than for purchases of commodities or printing; expenditure of appropriations for purchases of commodities; expenditure of appropriations for personal services; expenditure of appropriations by legislative and judicial branches; appropriations expenditures by spending units without offices at capitol; sanctions for failure to submit required requests, amendments and reports to legislative auditor; purchasing division created; purpose; director and qualifications for director; applicability of purchasing requirements; director authorized to deal with manufacturers of prescription drugs; director to keep books and records and have available for public inspection; powers and duties of director of purchasing; purchasing rules and regulations to be issued by director; standard specifications for purchasing to be promulgated and adopted by director; spending units required to utilize standard specifications; assistance from other spending units in promulgating standard specifications; director of purchasing to advise with heads of state and other institutions producing commodities and printing; director of purchasing to resolve conflicts between state and other entities with preference; director to make facilities and services of purchasing available to local governmental bodies; expenses incurred by purchasing to be paid by local governmental body; director of purchasing to examine and test purchases for nonconformity with contractual require-

ments; report required; sealed bids in the amount specified by regulation; publication of advertisements; purchase of products of nonprofit workshops; purchasing employee to assist with nonprofit workshops; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder, considering quality, conformity with specifications, suitability, availability and delivery; uniform bids; record of bids; public inspection of bids; vendor registration and payment of annual fee; contents of registration forms; false affidavits and penalties; director may waive vendor registration and fee for sole source and emergency purchases; contracts to be approved by attorney general as to form; filing with auditor; copies of purchase orders to be sent to finance division for encumbrance; emergency purchases in open market; special fund created for purchases and maintenance of commodities in volume and printing; violation of purchasing laws and rules; personal liability; substituting commodity bearing particular trade name or brand for commodity meeting standard specifications at an equal or lower price; purchases from federal government, federal government contracts and higher education contracts; spending units to submit lists of expendable commodities; contracts for public printing and printing paper; printing plants at state and other institutions; legislative printing; printing of reports of supreme court of appeals; director of purchasing to print and bind reports to be transmitted to the governor; director to specify uniform standards for annual reports; limiting number of publications; purchasing division to perform printing and binding; exceptions; printing, binding and stationery to be paid from current expense and unclassified appropriations; director of purchasing to be custodian of reports and acts; sale of reports and acts by director; director of purchasing to establish central duplicating office; exemptions and contracts for duplicating; financial interest of secretary, director and employees of the purchasing division; receiving from interested party; penalties; applicability of bribery statute; penalty for violation of article; obtaining money and property by fraud or under false

pretenses; penalties; corrupt combinations or conspiracies prohibited; penalties; director to suspend right to bid; notice of suspension; secretary to review suspension of right to bid; authority of director of purchasing over inventories and property; submission of annual inventories; inventory of personal property; maintenance and repair of office furniture, machinery and equipment; vendor preference; exceptions; leases for space; leasing of space by secretary; delegation of authority by regulation; selection of grounds, buildings, office space or other space; acquisition by contract for lease; long-term leases; permanent changes to be approved by secretary; leases and other instruments for space to be signed by secretary or director of purchasing; approval as to form; filing; leasing for space rules and regulations; state agency for surplus property created; authority and duties of state agency for surplus property; disposition of surplus state property; semi-annual report of sales; application of sale proceeds; warehousing, transfer and other charges; department of agriculture and other agencies exempted from authority of state agency for surplus property; travel rules and regulations; exceptions; central motor pool for state-owned vehicles and aircraft; secretary to purchase and to dispose of vehicles and aircraft; maintenance and service to vehicles and aircraft; special fund for travel management created; expenditures; central non-profit coordinating agency and committee for the purchase of commodities and services from the handicapped; purpose; central non-profit agency duties and responsibilities; committee for purchase of commodities and services from the handicapped duties, responsibilities, compensation, and expenses; committee to adopt rules and regulations; exceptions from other code provisions; director of purchasing to determine comparable quality and price; general services division; director; general services division to have care, control and custody of capitol buildings and grounds; major renovations and repairs to be made at direction of secretary; security officers; appointment, oath and weapons; powers and duties of security officers; secretary to preserve law and order on capitol grounds; unlawful to kill or molest

animals, birds or fowls upon capitol grounds; powers and duties of security officers; penalties; secretary to regulate parking on state owned property; parking rules and regulations; legislative parking; penalties and enforcement; governor's mansion advisory committee created; appointment and terms of members; meetings and responsibilities of members; cooperation by spending units of state; annual report to be made to governor and Legislature; office of governor's mansion director created; duties and responsibilities of director; official use of state rooms in mansion; vacating private rooms of mansion by out-going governor; information services and communications division; definitions for division; information services and communications division created and purpose; use of facilities; rules and regulations for division; director of division; appointment and qualifications of director; powers and duties of division; director to report on the economic justification, system design and suitability of equipment and systems used in state government; governor to review findings; authority of governor to order transfer of equipment and personnel; professional staff and reimbursement for education and training; approval of director required for procurements or changes in data-processing and/or telecommunications equipment or services; division to control central mailing office; central mailing office employees; central mailing office responsibilities; spending units to use central mailing office; preparation of mail for special rates; special fund created; payments into fund and charges for services; disbursements from fund; confidential records not to be delivered to division; public records management and preservation act; short title; declaration of policy for act; definitions used in act; categories of records to be preserved established; secretary of administration to be state records administrator; records management and preservation advisory committee; members, designated representatives, rules, meetings and compensation; duties of administrator; rules and regulations to be promulgated by administrator; duties of agency heads; preserving duplicates of essential state records; safekeeping of essential state records; maintenance, inspection and use of essential



state records; confidential essential state records to be protected; administrator to review program at least annually; records management and preservation of local records; administrator to assist legislative and judicial branches; disposal of records; destruction of nonrecord materials; administrator to make annual written report to governor for transmission to Legislature; voluntary gilding the dome check-off program; contributions credited to special department of administration fund; public moneys and securities; appropriations, expenditures and deductions; liabilities incurred by state boards, commissions, officers or employee which cannot be paid out of current appropriations; claims due and against the state; interest on public contracts; payment of interest by the state on contracts when final payment is delayed; miscellaneous boards and officers; civil service system; division of personnel; secretary of administration to appoint director of division of personnel; creating special revenue account for division of personnel and authorizing agencies to transmit funds for personnel services.

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

That article eight, chapter five; sections two-a, two-b and two-c, article one, sections nineteen-a, thirty-five and thirty-six, article two, section fourteen-a, article three, sections one-a, six and seven, article four, article four-a, sections four and five, article five, and section three-a, article eight, all of chapter five-a be repealed; that sections three, four and seven, article six, chapter five be amended and reenacted; that sections one, two, three, four, five and six, article one, chapter five-a be amended and reenacted; that said article one be further amended by adding thereto two new sections, designated sections seven and eight; that article one-a, chapter five-a be amended and reenacted; that sections one, two, three, four, five, six, seven, eight, nine, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, article two, chapter five-a be amended and reenacted; that said article be further amended by adding

thereto two new sections, designated sections ten and eleven; that sections one, two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six and forty-seven, article three, chapter five-a be amended and reenacted; that said article be further amended by adding thereto eleven new sections, designated sections one-a, seven, twenty-three, thirty-seven-a, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three and fifty-four; that said article three-a, chapter five-a be amended and reenacted; that sections one, two, three, four and five, article four, chapter five-a be amended and reenacted; that sections one, two and three, article five, chapter five-a be amended and reenacted; that sections one, two, three, four, five, six, seven and eight, article seven, chapter five-a be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections nine, ten and eleven; that sections one, two, three, four, five, six and seven, article eight, chapter five-a be amended and reenacted; that said article be further amended by adding thereto twelve new sections, designated sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen; that section three, article nine, chapter five-a be amended and reenacted; that section seventeen, article three, chapter twelve be amended and reenacted; that section one, article three, chapter fourteen be amended and reenacted; and that sections seven and twenty-three, article six, chapter twenty-nine be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 6. STATE BUILDING COMMISSION.**

**§5-6-3. Definitions.**

1 The following terms, wherever used or referred to  
2 in this article, shall have the following meanings,  
3 unless a different meaning clearly appears from the  
4 context:

5 (1) "Commission" means the state building commis-  
6 sion of West Virginia or if said commission shall be  
7 abolished, any board or officer succeeding to the  
8 principal functions thereof, or to whom the powers  
9 given to said commission shall be given by law;

10 (2) "Bonds" means bonds issued by the commission  
11 pursuant to this article;

12 (3) "Project" means collectively the acquisition of  
13 land, the construction, equipping, maintaining and  
14 furnishing of a building or buildings, together with  
15 incidental approaches, structures and facilities, herein  
16 authorized to be constructed;

17 (4) "Cost of project" includes the cost of construc-  
18 tion, the cost of equipping and furnishing same, the  
19 cost of all land, property, material and labor which are  
20 deemed essential thereto, the cost of improvements,  
21 financing charges, interest during construction, and all  
22 other expenses, including legal fees, trustees', engi-  
23 neers' and architects' fees which are necessarily or  
24 properly incidental to the project;

25 (5) "General tax revenues of the state" means  
26 revenues of the state derived from the exercise of the  
27 power of taxation and available for appropriation by  
28 the Legislature for general public purposes and shall  
29 not include revenues of the state, or of any officer,  
30 department or agency thereof, derived from taxes  
31 levied, collected and dedicated for a special purpose or  
32 purposes or derived from sources other than taxes  
33 such as profits, fees or charges; and

34 (6) "Rent" or "rental" includes all moneys received  
35 for the use of any part of a project either from the  
36 state of West Virginia or any officer, department or

37 public corporation thereof, or from any instrumental-  
38 ity or political subdivision of the state, or directly or  
39 indirectly, from the United States of America or any  
40 officer, department, agency, instrumentality or public  
41 corporation thereof: *Provided*, That nothing in this  
42 article shall be taken to authorize the payment by or  
43 on behalf of the state of any rent in excess of the fair  
44 rental value of property used by or for such state  
45 officer or department or public corporation in the  
46 exercise of his or its statutory duties.

**§5-6-4. Powers of commission.**

- 1 The commission shall have power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the  
5 name of the commission or of the state, by purchase,  
6 lease, lease-purchase, or otherwise, real property or  
7 rights or easements necessary or convenient for its  
8 corporate purposes and to exercise the power of  
9 eminent domain to accomplish such purposes;
- 10 (4) To acquire, hold and dispose of personal property  
11 for its corporate purposes;
- 12 (5) To make bylaws for the management and regu-  
13 lation of its affairs;
- 14 (6) With the consent of the attorney general of the  
15 state of West Virginia, to use the facilities of his office,  
16 assistants and employees in all legal matters relating  
17 to or pertaining to the commission;
- 18 (7) To appoint officers, agents and employees, and fix  
19 their compensation;
- 20 (8) To make contracts, and to execute all instru-  
21 ments necessary or convenient to effectuate the intent  
22 of, and to exercise the powers granted to it by, this  
23 article;
- 24 (9) To renegotiate all contracts entered into by it  
25 whenever, due to a change in situation, it appears to  
26 the commission that its interests will be best served,
- 27 (10) To construct a building or buildings on real

28 property, which it may acquire, or which may be  
29 owned by the state of West Virginia, in the city of  
30 Charleston, as convenient as may be to the capitol  
31 building, together with incidental approaches, struc-  
32 tures and facilities, subject to such consent and  
33 approval of the city of Charleston in any case as may  
34 be necessary; and, in addition, to acquire or construct  
35 a warehouse, including office space therein, in Kana-  
36 wha county for the West Virginia alcohol beverage  
37 control commissioner, and equip and furnish the same;  
38 and to acquire or construct, through lease, purchase,  
39 lease-purchase, or bond financing, hospitals or other  
40 facilities, buildings, or additions or renovations to  
41 buildings as may be necessary for the safety and care  
42 of patients, inmates and guests at facilities under the  
43 jurisdiction of and supervision of the division of health  
44 and at institutions under the jurisdiction of the  
45 division of corrections; and to formulate and program  
46 plans for the orderly and timely capital improvement  
47 of all of said hospitals and institutions and the state  
48 capitol buildings; and to construct a building or  
49 buildings in Kanawha county to be used as a general  
50 headquarters by the division of public safety to  
51 accommodate that division's executive staff, clerical  
52 offices, technical services, supply facilities and dormi-  
53 tory accommodations; and to develop, improve and  
54 expand state parks and recreational facilities to be  
55 operated by the division of commerce; and to establish  
56 one or more systems or complexes of buildings and  
57 projects under control of the commission; and, subject  
58 to prior agreements with holders of bonds previously  
59 issued, to change the same from time to time, in order  
60 to facilitate the issuance and sale of bonds of different  
61 series on a parity with each other or having such  
62 priorities between series as the commission may  
63 determine; and to acquire by purchase, eminent  
64 domain or otherwise all real property or interests  
65 therein necessary or convenient to accomplish the  
66 purposes of this subdivision;

67 (11) To maintain, construct and operate a project  
68 authorized hereunder;

69 (12) To charge rentals for the use of all or any part  
70 of a project or buildings at any time financed, con-  
71 structed, acquired or improved in whole or in part

72 with the proceeds of sale of bonds issued pursuant to  
73 this article, subject to and in accordance with such  
74 agreements with bondholders as may be made as  
75 hereinafter provided: *Provided*, That on and after the  
76 effective date of the amendments to this section, to  
77 charge rentals for the use of all or any part of a  
78 project or buildings at any time financed, constructed,  
79 acquired, maintained or improved in whole or in part  
80 with the proceeds of sale of bonds issued pursuant to  
81 this article, subject to and in accordance with such  
82 agreements with bondholders as may be made as  
83 hereinafter provided, or with any funds available to  
84 the state building commission, including but not  
85 limited to all buildings and property owned by the  
86 state of West Virginia or by the state building commis-  
87 sion, but no such rentals shall be charged to the  
88 governor, attorney general, secretary of state, state  
89 auditor, state treasurer, the Legislature and the  
90 members thereof, the supreme court of appeals, nor  
91 for their offices, agencies, official functions and duties;

92 (13) To issue negotiable bonds and to provide for the  
93 rights of the holders thereof;

94 (14) To accept and expend any gift, grant or contri-  
95 bution of money to, or for the benefit of, the commis-  
96 sion, from the state of West Virginia or any other  
97 source for any or all of the purposes specified in this  
98 article or for any one or more of such purposes as may  
99 be specified in connection with such gift, grant or  
100 contribution;

101 (15) To enter on any lands and premises for the  
102 purpose of making surveys, soundings and  
103 examinations;

104 (16) To invest in United States government obliga-  
105 tions, on a short-term basis, any surplus funds which  
106 the commission may have on hand pending the com-  
107 pletion of any project or projects; and

108 (17) To do all things necessary or convenient to carry  
109 out the powers given in this article.

110 The rights and powers set forth in subdivision (10) of

111 this section shall not be construed as in derogation of  
112 any rights and powers now vested in the West Virginia  
113 alcohol beverage control commissioner, the depart-  
114 ment of mental health, the commissioner of public  
115 institutions or the department of natural resources.

**§5-6-7. Contracts with commission to be secured by bond;  
competitive bids required for certain  
contracts.**

1 The commission shall construct a project pursuant to  
2 a contract or contracts. Every such contract shall be  
3 secured by a bond meeting the requirements of section  
4 thirty-nine, article two, chapter thirty-eight of this  
5 code.

6 No contract or contracts for the construction, remo-  
7 deling, renovation or repair of any building or build-  
8 ings or any approaches, structures or facilities inciden-  
9 tal thereto, or for the equipping and furnishing of any  
10 building or buildings, when the anticipated expendi-  
11 ture therefor will exceed the sum of five thousand  
12 dollars, shall be entered into except upon the basis of  
13 competitive sealed bids: *Provided*, That effective with  
14 the effective date of the amendments to this section,  
15 no contract or contracts for the construction, remodel-  
16 ing, renovation or repair of any building or buildings  
17 or any approaches, structures or facilities incidental  
18 thereto, or for the equipping and furnishing of any  
19 building or buildings, when the anticipated expendi-  
20 ture therefor will exceed the sum of ten thousand  
21 dollars, shall be entered into except upon the basis of  
22 such bids. Such bids shall be obtained by public notice  
23 soliciting such bids published as a Class II legal  
24 advertisement in compliance with the provisions of  
25 article three, chapter fifty-nine of this code, and the  
26 publication area for such publication shall be the  
27 county in which any such contract is to be performed.  
28 The publication shall be completed at least fourteen  
29 days prior to the final date for the submission of bids.  
30 The commission may in addition to such publication  
31 also solicit sealed bids by sending requests by mail to  
32 prospective bidders. The contract shall be awarded to  
33 the lowest responsible bidder, unless any and all bids

34 are rejected, in which event new bids shall be sought  
35 by again publishing notice as aforesaid. Any bid, with  
36 the name of the bidder, shall be entered on a record  
37 and each record, with the successful bid indicated  
38 thereon, shall, after the award of any contract, be open  
39 to public inspection in the office of the secretary of the  
40 commission.

## **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

### **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

#### **§5A-1-1. Definitions.**

1 For the purpose of this chapter:

2 “Commodities” means supplies, material, equip-  
3 ment, contractual services, and any other articles or  
4 things used by or furnished to a department, agency or  
5 institution of state government.

6 “Contractual services” shall include telephone,  
7 telegraph, electric light and power, water and similar  
8 services.

9 “Director” means the director of the division  
10 referred to in the heading of the article in which the  
11 word appears.

12 “Expendable commodities” means those commodi-  
13 ties which, when used in the ordinary course of  
14 business, will become consumed or of no market value  
15 within the period of one year or less.

16 “Nonprofit workshops” means an establishment (a)  
17 where any manufacture or handiwork is carried on,  
18 (b) which is operated either by a public agency or by  
19 a cooperative or by a nonprofit private corporation or  
20 nonprofit association, in which no part of the net  
21 earnings thereof inures, or may lawfully inure, to the  
22 benefit of any private shareholder or individual, (c)  
23 which is operated for the primary purpose of provid-  
24 ing remunerative employment to blind or severely  
25 disabled persons who cannot be absorbed into the  
26 competitive labor market, and (d) which shall be  
27 approved, as evidenced by a certificate of approval, by  
28 the state board of vocational education, division of



29 vocational rehabilitation.

30 "Printing" means printing, binding, ruling, litho-  
31 graphing, engraving and other similar services.

32 "Removable property" means any personal property  
33 not permanently affixed to or forming a part of real  
34 estate.

35 "Secretary" means the secretary of administration  
36 and, as used in article two of this chapter, the director  
37 of the budget.

38 "Spending officer" means the executive head of a  
39 spending unit, or a person designated by him.

40 "Spending unit" means a department, agency or  
41 institution of the state government for which an  
42 appropriation is requested, or to which an appropria-  
43 tion is made by the Legislature.

**§5A-1-2. Department of administration and office of secre-  
tary; secretary; division of finance and  
administration abolished; divisions; directors.**

1 The department of administration and the office of  
2 secretary of administration are hereby continued in  
3 the executive branch of state government. The secre-  
4 tary shall be the chief executive officer of the depart-  
5 ment and director of the budget and shall be appointed  
6 by the governor, by and with the advice and consent  
7 of the Senate, for a term not exceeding the term of the  
8 governor. The office of the commissioner of finance  
9 and administration and the division of finance and  
10 administration are hereby abolished. All duties and  
11 responsibilities of the commissioner of finance and  
12 administration are hereby vested in the secretary of  
13 administration. All records, responsibilities, obliga-  
14 tions, assets and property, of whatever kind and  
15 character, of the division of finance and administration  
16 are hereby transferred to the department of adminis-  
17 tration. The balances of all funds of the division of  
18 finance and administration are hereby transferred to  
19 the department of administration. The department of  
20 administration is hereby authorized to receive federal  
21 funds.

22 The secretary shall serve at the will and pleasure of  
 23 the governor. The annual compensation of the secre-  
 24 tary shall be as specified in section three, article one,  
 25 chapter five-f of this code.

26 There shall be in the department of administration  
 27 a finance division, a general services division, an  
 28 information services and communications division, an  
 29 insurance and retirement division, a personnel divi-  
 30 sion and a purchasing division. The insurance and  
 31 retirement division shall be comprised of the public  
 32 employees retirement system and board of trustees,  
 33 the public employees insurance agency and public  
 34 employees advisory board, the teachers retirement  
 35 system and teachers' retirement board, and the board  
 36 of risk and insurance management. Each division shall  
 37 be headed by a director who may also head any and  
 38 all sections within that division and who shall be  
 39 appointed by the secretary. In addition to the divisions  
 40 enumerated above, there shall also be in the depart-  
 41 ment of administration those agencies, boards, com-  
 42 missions and councils specified in section one, article  
 43 two, chapter five-f of this code.

**§5A-1-3. Powers and duties of secretary, division heads and employees.**

1 The secretary shall have control and supervision of  
 2 the department of administration and shall be respon-  
 3 sible for the work of each of its employees. The  
 4 secretary shall have such power and authority as  
 5 specified in section two, article two, chapter five-f of  
 6 this code. The secretary shall also have the authority  
 7 to employ such assistants and attorneys as may be  
 8 necessary for the efficient operation of the depart-  
 9 ment. The secretary, the division heads and the  
 10 employees of the department shall perform the duties  
 11 herein specified and shall also perform such other  
 12 duties as the governor may prescribe.

**§5A-1-4. Council of finance and administration.**

1 The council of finance and administration is hereby  
 2 created and shall be composed of ten members, four of  
 3 whom shall serve ex officio and six of whom shall be

4 appointed as herein provided. The ex officio members  
5 shall be the secretary of the department of administra-  
6 tion, the attorney general or his designee, the state  
7 treasurer or his designee and the state auditor or his  
8 designee; such designees being authorized voting ones.  
9 From the membership of the Legislature, the presi-  
10 dent of the senate shall appoint three senators as  
11 members of the council, not more than two of whom  
12 shall be members of the same political party, and the  
13 speaker of the house shall appoint three delegates as  
14 members of the council, not more than two of whom  
15 shall be members of the same political party. Members  
16 of the council appointed by the president of the senate  
17 and the speaker of the house shall serve at the will  
18 and pleasure of the officer making their appointment.  
19 The secretary of administration shall serve as chair-  
20 man of the council. Meetings of the council shall be  
21 upon call of the chairman or a majority of the  
22 members thereof. It shall be the duty of the chairman  
23 to call no less than four meetings in each fiscal year,  
24 one in each quarter, or more often as necessary, and  
25 all meetings shall be open to the public. All meetings  
26 of the council shall be held at the capitol building in  
27 a suitable committee room which shall be made  
28 available by the Legislature for such purpose: *Pro-*  
29 *vided*, That the second quarterly meeting in each fiscal  
30 year shall be held in November and shall be a joint  
31 meeting with the joint committee on government and  
32 finance of the Legislature called jointly by the presi-  
33 dent of the senate, speaker of the house and secretary  
34 of administration.

35 The council shall serve the department of adminis-  
36 tration in an advisory capacity for purposes of review-  
37 ing the performance of the administrative and fiscal  
38 procedures of the state, including the oversight of all  
39 federal funds, and shall have the following duties:

40 (1) To advise with the secretary in respect to matters  
41 of budgetary intent and efficiency, including budget  
42 bill and budget document detail and format;

43 (2) To advise with the secretary concerning such  
44 studies of government and administration concerning

45 fiscal policy as it may consider appropriate;

46 (3) To advise with the secretary in the preparation  
47 of studies designed to provide long-term capital  
48 planning and finance for state institutions and agen-  
49 cies; and

50 (4) To advise with the secretary in respect to the  
51 application for, and receipt and expenditure of, antic-  
52 ipated or unanticipated federal funds.

53 The appointed, non-ex officio members of the coun-  
54 cil shall be entitled to receive such compensation and  
55 reimbursement for expenses in connection with per-  
56 formance of their duties, during interim periods, if not  
57 otherwise receiving the same for such identical peri-  
58 ods, as is authorized by the applicable sections of  
59 article two-a, chapter four of the code in respect to  
60 performance of duties either within the state or, if  
61 deemed necessary, out-of-state. Such compensation  
62 and expenses shall be incurred and paid only after  
63 approval by the joint committee on government and  
64 finance.

**§5A-1-5. Reports by secretary.**

1 The secretary shall make an annual report to the  
2 governor concerning the conduct of the department  
3 and the administration of the state finances. He shall  
4 also make such other reports as the governor may  
5 require.

**§5A-1-6. Oath and bond of secretary; bond required for  
director of the purchasing division; bonds for  
other directors and employees; cost of bonds.**

1 The secretary, before entering upon the duties of his  
2 office, shall take and subscribe to the oath prescribed  
3 by Section 5, Article IV of the constitution of West  
4 Virginia. Notwithstanding any other provisions to the  
5 contrary, the secretary shall execute a bond in the  
6 penalty of one hundred thousand dollars, payable to  
7 the state of West Virginia, with a corporate bonding or  
8 surety company authorized to do business in this state  
9 as surety thereon, approved by the governor, in form  
10 prescribed by the attorney general and conditioned

11 upon the faithful performance of his duties and the  
12 accounting for all money and property coming into his  
13 hands by virtue of his office. The oath and bond shall  
14 be filed with the secretary of state.

15 The director of the purchasing division shall execute  
16 a bond in the penalty of one hundred thousand dollars  
17 and any person employed as a state buyer in accor-  
18 dance with article three of this chapter shall execute  
19 a bond in the penalty of fifty thousand dollars, payable  
20 to the state of West Virginia, with a corporate bonding  
21 or surety company authorized to do business in this  
22 state as surety thereon, approved by the governor, in  
23 form prescribed by the attorney general and condi-  
24 tioned upon the faithful performance of his duties  
25 under the provisions of this chapter and all rules and  
26 regulations promulgated pursuant to such chapter and  
27 the accounting for all money and property coming into  
28 his hands by virtue of his office or position. The bonds  
29 shall be filed with the secretary of state. In lieu of  
30 separate bonds for state buyers, a blanket surety bond  
31 may be obtained. The other division directors and all  
32 other employees of the department shall be covered by  
33 bonds in cases where the secretary thinks it necessary,  
34 which bonds shall be in the penalty prescribed by the  
35 secretary and shall be filed with the secretary of state.

36 The cost of all such surety bonds shall be paid from  
37 funds appropriated to the department of  
38 administration.

**§5A-1-7. Delegation of powers and duties by secretary.**

1 The powers and duties vested in the secretary may  
2 be delegated by him to his assistants and employees,  
3 but the secretary shall be responsible for all official  
4 acts of the department.

**§5A-1-8. Right of appeal from interference with functioning of agency.**

1 Upon occasion of a showing that the application of  
2 the authority vested under the provisions of this  
3 chapter may interfere with the successful functioning  
4 of any department, institution or agency of the gov-

5 ernment, such department, institution or agency may  
6 have the right of appeal to the governor for review of  
7 the case and the decision or conclusion of the governor  
8 shall govern in such cases.

**ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.**

**§5A-1A-1. Employee suggestion award program continued.**

1 There is hereby continued an employee suggestion  
2 award program within the department of administra-  
3 tion for employees of state government. Under this  
4 program cash or honorary awards may be made to  
5 state employees whose adopted suggestions will result  
6 in substantial savings or improvement in state  
7 operations.

**§5A-1A-2. Board created; term of members.**

1 There is hereby continued an employee suggestion  
2 award board which shall be composed of the secretary  
3 of administration or his designee, the secretary of the  
4 department of commerce, labor and environmental  
5 resources or his designee, the president of the senate  
6 or his designee, the speaker of the house of delegates  
7 or his designee, one member of the house of delegates  
8 to be appointed by the speaker of the house, one  
9 member of the senate to be appointed by the president  
10 of the senate, and the secretary of the department of  
11 health and human resources or his designee. The  
12 terms of the members of the board shall be consistent  
13 with the terms of the offices to which they have been  
14 elected or appointed.

**§5A-1A-3. Duties of board; excluded employees.**

1 It shall be the duty of the board to adopt rules  
2 governing its proceedings, to elect a chairman and  
3 secretary, to keep permanent and accurate records of  
4 its proceedings, to establish criteria for making  
5 awards, to adopt rules and regulations to carry out the  
6 provisions of this article, and to approve each award  
7 made.

8 In establishing criteria for making awards, the board  
9 may exclude certain levels of positions from participa-

10 tion in the program, but in no event shall:

11 (1) The following levels of management, within the  
12 spending unit where the adopted suggestion will result  
13 in substantial savings, be eligible to receive cash  
14 awards under the program:

15 (a) Governor's staff, departmental secretaries and  
16 their equivalent.

17 (b) Assistant or deputy secretary, assistant to secre-  
18 tary, commissioner, assistant or deputy commissioner,  
19 major fiscal and administrative policy departmental  
20 staff or their equivalent.

21 (c) Director or division chief, including the division  
22 chief or director of a statewide program, and which  
23 includes a chief of a division supervising several  
24 service units or their equivalent.

25 (d) Assistant to director or division chief, section  
26 chief or head of major departmental function or their  
27 equivalent; and

28 (2) The following levels of management, not within  
29 the spending unit where the adopted suggestion will  
30 result in substantial savings, be eligible to receive cash  
31 awards under the program:

32 (a) Governor's staff, departmental secretaries and  
33 their equivalent;

34 (b) Assistant or deputy secretary, assistant to secre-  
35 tary, commissioner, assistant or deputy commissioner.

**§5A-1A-4. Awards.**

1 The maximum cash award approved shall be limited  
2 to twenty percent of the first year's estimated savings,  
3 as established by the head of the affected spending  
4 unit, or ten thousand dollars, whichever is less. Any  
5 cash awards approved by the board shall be charged  
6 by the head of the affected spending unit against the  
7 appropriation item or items to which such estimated  
8 savings apply.

**§5A-1A-5. State ownership of suggestions.**

1 The state shall become the sole owner of all sugges-  
2 tions accepted by the employee suggestion award  
3 board. The acceptance of a suggestion by the board  
4 shall constitute an agreement by the employee and the  
5 state that all claims pertaining to the suggestion,  
6 immediate and future, on the state of West Virginia  
7 are waived.

**ARTICLE 2. FINANCE DIVISION.**

**§5A-2-1. Finance division created; director; sections; powers and duties.**

1 The finance division of the department of adminis-  
2 tration is hereby created. The division shall be under  
3 the supervision and control of a director, who shall be  
4 appointed by the secretary. There shall be in the  
5 finance division, an accounting section and a budget  
6 section. The accounting section shall have the duties  
7 conferred upon it by this article and by the secretary,  
8 including, but not limited to, general financial  
9 accounting, payroll, accounts payable and accounts  
10 receivable for the department of administration.

11 The budget section shall act as staff agency for the  
12 governor in the exercise of his powers and duties  
13 under Section 51, Article VI of the state constitution,  
14 and shall exercise and perform the other powers and  
15 duties conferred upon it by this article.

**§5A-2-2. General powers and duties of secretary as director of budget.**

1 The secretary, under the immediate supervision of  
2 the governor, shall have the power and duty to:

3 (1) Exercise general supervision of, and make rules  
4 and regulations for, the government of this division;

5 (2) Administer the budget in accordance with this  
6 article;

7 (3) Serve the governor in the consideration of  
8 requests for appropriations and the preparation of the  
9 budget document;



10 (4) Make such investigations and submit such reports  
11 as the governor may require;

12 (5) Make a continuous study of state expenditures  
13 and eligibility for federal matching dollars and make  
14 such recommendations to the governor for the more  
15 economical use of state funds as he/she shall find  
16 practicable;

17 (6) Render assistance to spending officers with  
18 respect to the fiscal affairs of spending units; and

19 (7) Exercise such other powers as are vested in him  
20 by this article, or which may be appropriate to the  
21 discharge of his duties.

**§5A-2-3. Requests for appropriations; copies to legislative auditor.**

1 The spending officer of each spending unit, other  
2 than the legislative and the judicial branches of state  
3 government, shall on or before the first day of Sep-  
4 tember of each year, submit to the secretary, a request  
5 for appropriations for the fiscal year next ensuing. On  
6 or before the same date, the spending officer shall also  
7 transmit two copies of such request to the legislative  
8 auditor for the use of the finance committees of the  
9 Legislature.

10 If the spending officer of any spending unit fails to  
11 transmit to the legislative auditor two copies of the  
12 request for appropriations within the time specified in  
13 this section, the legislative auditor shall notify the  
14 secretary, auditor and treasurer of such failure, and  
15 thereafter no funds appropriated to such spending unit  
16 shall be encumbered or expended until the spending  
17 officer thereof has transmitted such copies to the  
18 legislative auditor.

19 If a spending officer submits to the secretary an  
20 amendment to the request for appropriations, two  
21 copies of such amendment shall forthwith be transmit-  
22 ted to the legislative auditor.

23 Notwithstanding any provision in this section to the  
24 contrary, the state superintendent of schools, shall on

25 or before the fifteenth day of December of each year,  
26 submit to the secretary a request for appropriations  
27 for the fiscal year next ensuing for state aid to schools  
28 and two copies of such request to the legislative  
29 auditor for the use of the finance committees of the  
30 Legislature. The request for appropriation shall be  
31 accompanied with copies of certified enrollment and  
32 employee lists from all county superintendents for the  
33 current school year. If certified enrollment and  
34 employee lists are not available to the state superin-  
35 tendent from any of the county school boards, the  
36 state superintendent shall notify those school boards  
37 and no funds shall be expended for salary or compen-  
38 sation to their county superintendent until the certi-  
39 fied lists of enrollment and employees are submitted.

**§5A-2-4. Contents of requests.**

1 A request for an appropriation for a spending unit  
2 shall specify and itemize in written form:

3 (1) A statement showing the amount and kinds of  
4 revenue and receipts collected for use of the spending  
5 agency during the next preceding fiscal year and  
6 anticipated collections for the fiscal year next ensuing;

7 (2) A statement by purposes and objects, of the  
8 amount of appropriations requested for the spending  
9 unit without deducting the amount of anticipated  
10 collections of special revenue, federal funds or other  
11 receipts;

12 (3) A statement showing the actual expenditures of  
13 the spending unit for the preceding year and esti-  
14 mated expenditures for the current fiscal year item-  
15 ized by purposes and objects, including those from  
16 regular and supplementary appropriations, federal  
17 funds, private contributions, transfers, allotments from  
18 an emergency or contingent fund and any other  
19 expenditures made by or for the spending unit;

20 (4) A statement showing the number, classification  
21 and compensation of persons employed by the spend-  
22 ing unit distinguishing between regular, special and  
23 casual employees during the preceding fiscal year and

24 during the current fiscal year. The statement shall  
25 show the personnel requirements in similar form for  
26 the ensuing fiscal year for which appropriations are  
27 requested;

28 (5) A statement showing in detail the purposes for  
29 which increased amounts of appropriations, if any, are  
30 requested, and giving a justification statement for the  
31 expenditure of the increased amount. A construction  
32 or other improvement request shall show in detail the  
33 kind and scope of construction or improvement  
34 requested;

35 (6) A statement of money claims against the state  
36 arising out of the activities of the spending unit; and

37 (7) Such other information as the secretary may  
38 request.

**§5A-2-5. Form of requests.**

1 The secretary shall specify the form and detail of  
2 itemization of requests for appropriations and state-  
3 ments to be submitted by a spending unit: *Provided*,  
4 That such request for appropriations must include at  
5 a minimum the information required by section four  
6 of this article. The secretary shall furnish blank forms  
7 for this purpose.

**§5A-2-6. Information concerning state finances.**

1 The secretary shall ascertain for the preceding year  
2 and as estimated for the current fiscal year:

3 (1) The condition of each of the funds of the state;

4 (2) A statement of all revenue collections both  
5 general and special; and

6 (3) Such other information relating to the finances of  
7 the state as the governor may request.

**§5A-2-7. Appropriations for judiciary.**

1 The governor shall transmit to the secretary the  
2 appropriations required by law for the judiciary for  
3 the fiscal year next ensuing and which have been  
4 certified to the governor by the auditor. The auditor

5 shall certify such appropriations to the governor in  
6 accordance with Section 51, Article VI of the state  
7 constitution, on or before September first of each year.

**§5A-2-8. Examination of requests for appropriations.**

1 The secretary shall examine the requests of a  
2 spending unit with respect to requested appropria-  
3 tions, itemization, sufficiency of justification state-  
4 ments, and accuracy and completeness of all other  
5 information which the spending officer is required to  
6 submit.

7 If the secretary finds a request, report, or statement  
8 of a spending unit inaccurate, incomplete or inade-  
9 quate, he shall consult with the spending officer of the  
10 unit and require the submission of the requests in  
11 proper form and content. The secretary shall assist  
12 spending officers in the preparation of their requests.

**§5A-2-9. Appropriation requests by other than spending units.**

1 A person or organization, other than a spending  
2 officer, who desires to request a general appropriation  
3 in the state budget, shall submit his request to the  
4 secretary on or before the first day of September of  
5 each year. The request shall be in the form prescribed  
6 by the secretary and shall be accompanied by a  
7 justification statement.

**§5A-2-10. Powers of secretary in administration of expenditures.**

1 The secretary shall supervise and control the expen-  
2 diture of appropriations made by the Legislature  
3 excluding those made to the Legislature and those  
4 made to the judicial branch of the state government.  
5 The expenditure of an appropriation made by the  
6 Legislature except that made for the Legislature itself  
7 and the judicial branch of state government shall be  
8 conditioned upon compliance by the spending unit  
9 with the provisions of this article. An appropriation  
10 made by the Legislature except that made for the  
11 Legislature itself and the judicial branch of state  
12 government shall be expended only in accordance

13 with this article.

**§5A-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.**

1 Prior to the beginning of each fiscal year the  
2 secretary shall estimate the revenue to be collected  
3 month by month by each classification of tax for that  
4 fiscal year as it relates to the official estimate of  
5 revenue for each tax for that fiscal year and the  
6 secretary shall certify this estimate to the governor  
7 and the legislative auditor by the first day of July for  
8 that fiscal year.

9 The secretary shall ascertain the collection of the  
10 revenue of the state and shall determine for each  
11 month of the fiscal year the proportion which the  
12 amount actually collected during a month bears to the  
13 collection estimated by him for that month. The  
14 secretary shall certify to the governor and the legisla-  
15 tive auditor, as soon as possible after the close of each  
16 month, and not later than the fifteenth day of each  
17 month, and at such other times as the governor or  
18 legislative auditor may request, the condition of the  
19 state revenues and of the several funds of the state  
20 and the proportion which the amount actually col-  
21 lected during the preceding month bears to the  
22 collection estimated by him for that month. The  
23 secretary shall include in this certification the same  
24 information previously certified for prior months in  
25 each fiscal year. For the purposes of this section, the  
26 secretary shall have the authority to require all  
27 necessary estimates and reports from any spending  
28 unit of the state government.

29 If the secretary fails to certify to the governor and  
30 the legislative auditor the information required by this  
31 section within the time specified herein, the legislative  
32 auditor shall notify the auditor and treasurer of such  
33 failure, and thereafter no funds appropriated to the  
34 department of administration shall be expended until  
35 the secretary has certified the information required by  
36 this section.

**§5A-2-12. Submission of expenditure schedules; contents; submission of information on unpaid obligations; copies to legislative auditor.**

1 Prior to the beginning of each fiscal year, the  
2 spending officer of a spending unit shall submit to the  
3 secretary a detailed expenditure schedule for the  
4 ensuing fiscal year. The schedule shall be submitted in  
5 such form and at such time as the secretary may  
6 require.

7 The schedule shall show:

8 (1) A proposed monthly rate of expenditure for  
9 amounts appropriated for personal services;

10 (2) Each and every position budgeted under personal  
11 services for the next ensuing fiscal year, with the  
12 monthly salary or compensation of each such position;

13 (3) A proposed quarterly rate of expenditure for  
14 amounts appropriated for employee benefits, current  
15 expenses, equipment and repairs and alterations  
16 classified by a uniform system of accounting as called  
17 for in section twenty-five of this article for each item  
18 of every appropriation;

19 (4) A proposed yearly plan of expenditure for  
20 amounts appropriated for buildings and lands; and

21 (5) A proposed quarterly plan of receipts itemized by  
22 type of revenue.

23 The secretary may accept a differently itemized  
24 expenditure schedule from a spending unit to which  
25 the above itemizations are not applicable.

26 The secretary shall consult with and assist spending  
27 officers in the preparation of expenditure schedules.

28 Within fifteen days after the end of each month of  
29 the fiscal year, the head of every spending unit shall  
30 certify to the legislative auditor the status of obliga-  
31 tions and payments of the spending unit for amounts  
32 of employee benefits, including but not limited to  
33 obligations and payments for social security withhold-  
34 ing and employer matching, public employees insur-

35 ance premiums and public employees retirement and  
36 teachers retirement systems.

37 When a spending officer submits an expenditure  
38 schedule to the secretary as required by this section,  
39 the spending officer shall at the same time transmit a  
40 copy thereof to the legislative auditor and the joint  
41 committee on government and finance or its designee.  
42 If a spending officer of a spending unit fails to  
43 transmit such copy to the legislative auditor on or  
44 before the beginning of the fiscal year, the legislative  
45 auditor shall notify the secretary, auditor and trea-  
46 surer of such failure, and thereafter no funds approp-  
47 riated to such spending unit shall be encumbered or  
48 expended until the spending officer thereof has  
49 transmitted such copy to the legislative auditor.

50 In the event the legislative auditor determines from  
51 certified reports or from other sources that any  
52 spending unit is not making all payments and  
53 transfers for employee benefits from funds approp-  
54 riated for that purpose, the legislative auditor shall  
55 notify the secretary of administration, auditor and  
56 treasurer of such determination and thereafter no  
57 funds appropriated to such spending unit shall be  
58 encumbered or expended for the salary or compensa-  
59 tion to the head of the spending unit until the legisla-  
60 tive auditor shall determine that such payments or  
61 transfers are being made on a timely basis.

**§5A-2-13. Examination and approval of expenditure sched-  
ules; amendments; copies to legislative  
auditor.**

1 The secretary shall examine the expenditure sched-  
2 ule of each spending unit, and if he finds that it  
3 conforms to the appropriations made by the Legisla-  
4 ture, the requirements of this article, and is in  
5 accordance with sound fiscal policy, he shall approve  
6 the schedule.

7 The expenditure of the appropriations made to a  
8 spending unit shall be only in accordance with the  
9 approved expenditure schedule unless the schedule is  
10 amended with the consent of the secretary, or unless

11 appropriations are reduced in accordance with the  
 12 provisions of sections twenty to twenty-three inclu-  
 13 sive, of this article. The spending officer of a spending  
 14 unit shall transmit to the legislative auditor a copy of  
 15 each and every requested amendment to such sched-  
 16 ule at the same time that such requested amendment  
 17 is submitted to the secretary. The secretary shall send  
 18 to the legislative auditor copies of any schedule  
 19 amended with the secretary's approval.

**§5A-2-14. Reserves for emergencies.**

1 The secretary, with the approval of the governor,  
 2 may require that an expenditure schedule provide for  
 3 a reserve for emergencies out of the total amount  
 4 appropriated to the spending unit. The amount of the  
 5 reserve shall be determined by the secretary in  
 6 consultation with the spending officer.

**§5A-2-15. Requests for quarterly allotments; approval or  
 reduction by governor.**

1 At least thirty days prior to the beginning of each  
 2 quarter of the fiscal year, each spending officer shall  
 3 submit to the secretary a request for an allotment of  
 4 public funds sufficient to operate the unit during the  
 5 ensuing quarter in accordance with the approved  
 6 expenditure schedule.

7 The secretary shall examine the requests and, if he  
 8 finds that the amounts requested are in accordance  
 9 with the approved expenditure schedules and are in  
 10 accordance with sound fiscal policy, he shall submit  
 11 the requests to the governor. The secretary shall also  
 12 submit a summary statement showing the amounts  
 13 expended under the budget for each preceding quarter  
 14 of the fiscal year and the total amount requested for  
 15 allotment during the ensuing quarter.

16 The governor shall consider the amount of requests  
 17 for allotment and the collection of revenues. If the  
 18 governor finds that the collection of revenue warrants  
 19 the expenditure of the amount requested in the  
 20 allotment, he shall approve the allotment of funds for  
 21 the ensuing quarter and send copies of the requests to



22 the legislative auditor after approval. If the governor  
23 finds that the collection of revenue does not warrant  
24 the allotment of the requested amount, he may reduce  
25 the amount of allotments pending the collection of  
26 sufficient revenue.

**§5A-2-16. Limitation on expenditures.**

1 The expenditures of a spending unit during a  
2 quarter of the fiscal year shall not exceed the amount  
3 of the approved allotment, unless the governor  
4 approves the expenditure of a larger amount. Any  
5 amounts remaining unexpended at the close of the  
6 quarter shall be available for reallocation and expen-  
7 diture during any succeeding quarter of the same  
8 fiscal year.

**§5A-2-17. Transfers between items of appropriation of executive, legislative and judicial branches.**

1 Notwithstanding any other provision of law to the  
2 contrary, there shall be no transfer of amounts  
3 between items of appropriations nor shall moneys  
4 appropriated for any particular purpose be expended  
5 for any other purpose by any spending unit of the  
6 executive, legislative or judicial branch except as  
7 hereinafter provided:

8 (1) Any transfer of amounts between items of  
9 appropriations for the executive branch of state  
10 government shall be made only as specifically autho-  
11 rized by the Legislature.

12 (2) Any transfer of amounts between items of  
13 appropriations for the legislative branch of state  
14 government shall be made only pursuant to the joint  
15 rules adopted by such body and any amendments  
16 thereto, as certified to the state auditor, the state  
17 treasurer and the legislative auditor.

18 (3) Any transfer of amounts between items of  
19 appropriations for the judicial branch of state govern-  
20 ment shall be made only pursuant to rules adopted by  
21 the supreme court of appeals and any amendments  
22 thereto, as certified to the state auditor, the state  
23 treasurer and the legislative auditor.

**§5A-2-18. Expenditure of excess in collections; notices to auditor and treasurer.**

1 If the amount actually collected by a spending unit  
2 exceeds the amount which it is authorized to expend  
3 from collections, the excess in collections shall be set  
4 aside in a special surplus fund for the spending unit.  
5 Expenditures from this fund shall be made only in  
6 accordance with the following procedure:

7 The spending officer shall submit to the secretary:

8 (1) A plan of expenditure showing the purposes for  
9 which the surplus is to be expended; and

10 (2) A justification statement showing the reasons  
11 why the expenditure is necessary and desirable.

12 The secretary shall submit the request to the gover-  
13 nor with his recommendation.

14 If the governor approves the plan of expenditure  
15 and justification statement, and is satisfied that the  
16 expenditure is required to defray the additional cost of  
17 the service or activity of the spending unit, and that  
18 the expenditure is in accordance with sound fiscal  
19 policy, he/she may authorize the use of the surplus  
20 during the current fiscal year. Notices of such autho-  
21 rization shall be sent to the state auditor, the state  
22 treasurer and the legislative auditor.

23 An expenditure from a special surplus fund without  
24 the authorization of the governor, or other than in  
25 accordance with this section, shall be an unlawful use  
26 of public funds.

**§5A-2-19. Reports by spending units; copies to legislative auditor.**

1 A spending unit shall submit to the secretary such  
2 reports with respect to the work and expenditures of  
3 the unit as the secretary may request for the purposes  
4 of this article. Upon receipt thereof, the secretary shall  
5 immediately send copies of all such reports to the  
6 legislative auditor.

**§5A-2-20. Reduction of appropriations — Powers of governor.**

1 The governor may reduce appropriations according  
2 to any of the methods set forth in sections twenty-one  
3 and twenty-two of this article.

**§5A-2-21. Reduction of appropriations — Pro rata reduction of appropriations from general revenue.**

1 If the governor determines that the amounts, or  
2 parts thereof, appropriated from the general revenue  
3 cannot be expended without creating an overdraft or  
4 deficit in the general fund, he may instruct the  
5 secretary to reduce equally and pro rata all appropri-  
6 ations out of general revenue in such a degree as may  
7 be necessary to prevent an overdraft or a deficit in the  
8 general fund.

**§5A-2-22. Reduction of appropriations — Pro rata reduction of appropriations from other funds.**

1 The governor, in the manner set forth in section  
2 twenty-one may reduce appropriations from:

- 3 (1) Funds supported by designated taxes or fees; and
- 4 (2) Fees or other collections set aside for the support  
5 of designated activities or services.

6 Each fund and each fee or collection account shall be  
7 treated separately, but appropriations from the same  
8 fund or account shall be treated equally and reduced  
9 pro rata.

**§5A-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary and legislative auditor; and consolidated report of federal funds.**

1 Every agency of the state government when making  
2 requests or preparing budgets to be submitted to the  
3 federal government for funds, equipment, material or  
4 services, the grant or allocation of which is conditioned  
5 upon the use of state matching funds, shall have such  
6 request or budget approved in writing by the secretary

7 before submitting it to the proper federal authority. At  
8 the time such agency submits such a request or budget  
9 to the secretary for approval, it shall send a copy  
10 thereof to the legislative auditor. When such federal  
11 authority has approved the request or budget, the  
12 agency of the state government shall resubmit it to the  
13 secretary for recording before any allotment or  
14 encumbrance of the federal funds can be made and  
15 the secretary shall send a copy of the federally  
16 approved request or budget to the legislative auditor.  
17 Whenever any agency of the state government shall  
18 receive from any agency of the federal government a  
19 grant or allocation of funds which do not require state  
20 matching, the state agency shall report to the secre-  
21 tary and the legislative auditor for their information  
22 the amount of the federal funds so granted or allocated.

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

35 In addition to the other requirements of this section,  
36 the secretary shall, as soon as possible after the end of  
37 each fiscal year but no later than the first day of  
38 October of each year, submit to the governor and the  
39 legislative auditor a consolidated report which shall  
40 contain a detailed itemization of all federal funds  
41 received by the state during the preceding and current  
42 fiscal years, as well as those scheduled or anticipated  
43 to be received during the next ensuing fiscal year.  
44 Such itemization shall show: (a) each spending unit  
45 which has received or is scheduled or expected to  
46 receive federal funds in either of such fiscal years, (b)  
47 the amount of each separate grant or distribution

48 received or to be received, and (c) a brief description  
49 of the purpose of every such grant or other distribu-  
50 tion, with the name of the federal agency, bureau or  
51 department making such grant or distribution: *Pro-*  
52 *vided*, That it shall not be necessary to include in such  
53 report an itemization of federal revenue sharing funds  
54 deposited in and appropriated from the revenue  
55 sharing trust fund, or federal funds received for the  
56 benefit of the division of highways of the department  
57 of transportation.

58 The secretary is authorized and empowered to  
59 obtain from the spending units any and all informa-  
60 tion necessary to prepare such report.

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

**§5A-2-24. Management accounting.**

1 It is the intent of this section to establish a central-  
2 ized accounting system for the offices of the auditor,  
3 treasurer, secretary of administration and each spend-

4 ing unit of state government to provide more accurate  
5 and timely financial data and increase public  
6 accountability.

7 Notwithstanding any provision of this code to the  
8 contrary, the secretary shall develop and implement a  
9 new centralized accounting system for the planning,  
10 reporting and control of state expenditures in accor-  
11 dance with generally accepted accounting principles to  
12 be used by the auditor, treasurer, secretary and all  
13 spending units. The accounting system shall provide  
14 for adequate internal controls, accounting procedures,  
15 recording income collections, systems operation proce-  
16 dures and manuals, and periodic and annual general  
17 purpose financial statements, as well as provide for the  
18 daily exchange of needed information among users.

19 The financial statements shall be audited annually  
20 by outside independent certified public accountants,  
21 who shall also issue an annual report on federal funds  
22 in compliance with federal requirements.

23 The secretary shall implement the centralized  
24 accounting system no later than the thirty-first day of  
25 December, one thousand nine hundred and ninety-  
26 three, and, after approval of the system by the  
27 governor, shall require its use by all spending units.  
28 The auditor, treasurer, secretary and every spending  
29 unit shall maintain their computer systems and data  
30 files in a standard format in conformity with the  
31 requirements of the centralized accounting system.  
32 Any system changes must be approved in advance of  
33 such change by the secretary. The auditor, treasurer  
34 and secretary shall provide on-line interactive access  
35 to the daily records maintained by their offices.

**§5A-2-25. System of accounting to be certified to legislative  
auditor.**

1 The secretary shall certify the system of accounting  
2 and reporting installed pursuant to the provisions of  
3 this article, and any changes made therein, to the  
4 legislative auditor.

**§5A-2-26. Expenditure of appropriations — Generally.**

1 The expenditure of an appropriation made by the  
2 Legislature shall be conditioned upon compliance by  
3 the spending unit with the following provisions of this  
4 article.

**§5A-2-27. Expenditure of appropriations — Other than for purchases of commodities.**

1 A requisition for expenditure, other than an order  
2 for the purchase of commodities, shall be submitted as  
3 follows:

4 (1) The spending officer shall prepare and submit to  
5 the director a requisition showing the amount, pur-  
6 pose, and appropriation from which the expenditure is  
7 requested;

8 (2) The director shall examine the requisition and  
9 determine whether the amount is within the quarterly  
10 allotment, is in accordance with the approved expen-  
11 diture schedule, and otherwise conforms to the provi-  
12 sions of this article;

13 (3) If the director approves the requisition, he/she  
14 shall encumber the proper account in the amount of  
15 the requisition and shall transmit the requisition to  
16 the auditor for disbursement in accordance with law;  
17 and

18 (4) If the director disapproves the requisition, he/she  
19 shall return it to the spending unit with a statement  
20 of his reasons.

**§5A-2-28. Expenditure of appropriations — Purchases of commodities.**

1 If a requisition is a request for a purchase of  
2 commodities, the spending unit shall transmit the  
3 requisition to the budget section for the purpose of  
4 ascertaining whether it conforms to the expenditure  
5 schedule. If it does not so conform, the requisition  
6 shall be returned by the budget section to the spend-  
7 ing unit. If it conforms, the budget section shall  
8 transmit the requisition to the purchasing division for

9 purchase in accordance with article three of this  
 10 chapter. When a copy of the purchase order issued  
 11 pursuant thereto is received from the purchasing  
 12 division by the director in accordance with the provi-  
 13 sions of section fourteen, article three of this chapter,  
 14 the director shall ascertain whether the unencum-  
 15 bered balance in the appropriation concerned, in  
 16 excess of all unpaid obligations, is sufficient to defray  
 17 the cost of such order, and, if so, shall encumber the  
 18 proper account and so certify the fact to the purchas-  
 19 ing division, and, if not, shall notify the purchasing  
 20 division which, upon receipt of such notification, shall  
 21 return the requisition to the spending unit.

**§5A-2-29. Expenditure of appropriations — Payment of personal services.**

1 A requisition for the payment of personal services  
 2 shall upon receipt by the director be checked against  
 3 the personnel schedule of the spending unit making  
 4 the requisition. The director shall approve a requisi-  
 5 tion for personal services only if the amounts  
 6 requested are in accordance with the personnel  
 7 schedule of the spending unit.

**§5A-2-30. Expenditure of appropriations — Legislative and judicial expenditures.**

1 The provisions of sections twenty-nine and thirty of  
 2 this article shall not apply to the expenditure of  
 3 amounts appropriated for the use of the Legislature or  
 4 for the judiciary. In the case of appropriations made  
 5 for the Legislature, the clerk of the house of delegates,  
 6 or the clerk of the senate, as the case may be, shall  
 7 present his requisition directly to the auditor. In the  
 8 case of appropriations made for the judiciary, the clerk  
 9 of the court shall present his requisition or claim  
 10 directly to the auditor. In the case of appropriations  
 11 made for criminal charges, the clerk or the proper  
 12 officer shall present his claim directly to the auditor.

**§5A-2-31. Appropriations for officers, commissions, boards or institutions without office at capitol.**

1 All appropriations now or hereafter made for offic-



2 ers, commissions, boards or institutions, public or  
3 private, other than state institutions of higher educa-  
4 tion, state charitable institutions, state hospitals and  
5 sanatariums and state penal and correctional institu-  
6 tions, not having an office at the state capitol, shall,  
7 unless otherwise provided by law, be expended on  
8 requisitions of such officer, commission, board or  
9 institution, after approval by the secretary of the  
10 department of administration.

**§5A-2-32. Submission of requests, amendments, reports,  
etc., to legislative auditor; penalty for  
noncompliance.**

1 The provisions of sections three, eleven, twelve,  
2 thirteen, nineteen, twenty-three and twenty-five of  
3 this article requiring the secretary or the spending  
4 officer of the spending units, as the case may be, to  
5 supply copies of the documents specified therein to the  
6 legislative auditor, shall be strictly adhered to by all  
7 such persons. Any failure by any person to do so shall  
8 be a misdemeanor, and, upon conviction thereof, such  
9 person shall be fined the sum of one thousand dollars.  
10 Such penalty shall be in addition to other penalties  
11 provided elsewhere in this article and other remedies  
12 provided by law.

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-1. Division created; purpose; director; applicability of  
article.**

1 There is hereby created the purchasing division of  
2 the department of administration for the purpose of  
3 establishing centralized offices to provide purchasing,  
4 travel and leasing services to the various state agencies.

5 No person shall be appointed director of the pur-  
6 chasing division unless that person is, at the time of  
7 appointment, a graduate of an accredited college or  
8 university and shall have spent a minimum of ten of  
9 the fifteen years immediately preceding his appoint-  
10 ment employed in an executive capacity in purchasing  
11 for any unit of government or for any business,  
12 commercial or industrial enterprise.

13 The provisions of this article shall apply to all of the  
14 spending units of state government, except as is  
15 otherwise provided by this article or by law: *Provided,*  
16 That the provisions of this article shall not apply to the  
17 legislative branch unless otherwise provided or the  
18 Legislature or either house thereof requests the  
19 director to render specific services under the provi-  
20 sions of this chapter, nor to purchases of stock made  
21 by the alcohol beverage control commissioner, nor to  
22 purchases of text books for the state board of education.

**§5A-3-1a. Prescription drug products.**

1 In addition to other provisions of this article, the  
2 division is authorized, on behalf of the public  
3 employees insurance agency, the schools of medicine  
4 of the state colleges and universities, the department  
5 of vocational rehabilitation and the department of  
6 health and human resources, to negotiate and enter  
7 into agreements directly with manufacturers and  
8 distributors whose prescription drug products are sold  
9 in the state for sole-source and multiple-source drugs  
10 to be paid for under a state program for eligible  
11 recipients. Such agreements shall provide for a rebate  
12 of a negotiated percentage of the total product cost to  
13 be paid by the manufacturer or distributor of a  
14 specific product. Each agency is authorized to estab-  
15 lish, either singularly or together with other agencies,  
16 a drug formulary.

17 Prescription drug products are included in the drug  
18 formulary only upon completion of the application to  
19 and approval of the division. Those products for which  
20 a rebate is successfully negotiated are automatically  
21 included in the drug formulary for a period of time  
22 coterminous with the negotiated rebate.

23 If there has been a failure to negotiate or renew a  
24 rebate agreement for a specific prescription drug  
25 product, the pharmaceutical manufacturer of that  
26 product shall disclose to the division its most favorable  
27 pricing arrangements available to state and nonstate  
28 government purchasers. If the division determines  
29 that the product needs to be included in the drug

30 formulary, with the approval of the agency the  
31 division shall establish the amount to be reimbursed  
32 for the product based upon the price information  
33 provided by the manufacturer. The determination as  
34 to whether a product should be included in the drug  
35 formulary is based on the products efficiency, cost,  
36 medical necessity and safety. Any rebate returns, as a  
37 result of the provisions of this section regarding  
38 prescription drugs, shall be deposited in the general  
39 revenue fund.

40 It is expressly recognized that no other entity may  
41 interfere with the discretion and judgment given to  
42 the single state agency that administers the state's  
43 medicaid program. Therefore, the department of  
44 health and human resources is authorized to negotiate  
45 rebates as provided for in this section.

**§5A-3-2. Books and records of director.**

1 The director shall keep in his offices accurate books,  
2 accounts and records of all transactions of his division,  
3 and such books, accounts and records shall be public  
4 records, and shall at all proper times be available for  
5 inspection by any taxpayer of the state.

**§5A-3-3. Powers and duties of director of purchasing.**

1 The director, under the direction and supervision of  
2 the secretary, shall be the executive officer of the  
3 purchasing division and shall have the power and duty  
4 to:

5 (1) Direct the activities and employees of the pur-  
6 chasing division;

7 (2) Ensure that the purchase of or contract for  
8 commodities and printing shall be based, whenever  
9 possible, on competitive bid;

10 (3) Purchase or contract for, in the name of the  
11 state, the commodities and printing required by the  
12 spending units of the state government;

13 (4) Apply and enforce standard specifications estab-  
14 lished in accordance with section five of this article as  
15 hereinafter provided;

16 (5) Transfer to or between spending units or sell  
17 commodities that are surplus, obsolete or unused as  
18 hereinafter provided;

19 (6) Have charge of central storerooms for the supply  
20 of spending units;

21 (7) Establish and maintain a laboratory for the  
22 testing of commodities and make use of existing  
23 facilities in state institutions for that purpose as  
24 hereinafter provided;

25 (8) Suspend the right and privilege of a vendor to  
26 bid on state purchases when the director has evidence  
27 that such vendor has violated any of the provisions of  
28 the purchasing law or the rules and regulations of the  
29 director;

30 (9) Examine the provisions and terms of every  
31 contract entered into for and on behalf of the state of  
32 West Virginia that impose any obligation upon the  
33 state to pay any sums of money for commodities or  
34 services and approve each such contract as to such  
35 provisions and terms; and the duty of examination and  
36 approval herein set forth does not supersede the  
37 responsibility and duty of the attorney general to  
38 approve such contracts as to form: *Provided*, That the  
39 provisions of this subdivision do not apply in any  
40 respect whatever to construction or repair contracts  
41 entered into by the division of highways of the  
42 department of transportation: *Provided, however*, That  
43 the provisions of this subdivision do not apply in any  
44 respect whatever to contracts entered into by the  
45 university of West Virginia board of trustees or by the  
46 board of directors of the state college system, except to  
47 the extent that such boards request the facilities and  
48 services of the director under the provisions of this  
49 subdivision; and

50 (10) Assure that the specifications and commodity  
51 descriptions in all "requests for quotations" are  
52 prepared so as to permit all potential suppliers-  
53 vendors who can meet the requirements of the state  
54 an opportunity to bid and to assure that the specifica-  
55 tions and descriptions do not favor a particular brand

56 or vendor. If the director determines that any such  
57 specifications or descriptions as written favor a partic-  
58 ular brand or vendor or if it is decided, either before  
59 or after the bids are opened, that a commodity having  
60 different specifications or quality or in different  
61 quantity can be bought, the director may rewrite the  
62 "requests for quotations" and the matter shall be  
63 rebid.

**§5A-3-4. Rules and regulations of director.**

1 (a) The director shall adopt and amend rules and  
2 regulations to:

3 (1) Authorize a spending unit to purchase specified  
4 commodities directly and prescribe the manner in  
5 which such purchases shall be made;

6 (2) Authorize, in writing, a spending unit to pur-  
7 chase commodities in the open market for immediate  
8 delivery in emergencies, define such emergencies and  
9 prescribe the manner in which such purchases shall  
10 be made and reported to the director; and for the  
11 purposes mentioned in subdivision (1) and this subdivi-  
12 sion (2), the head of any spending unit, or the  
13 financial governing board of any institution, may, with  
14 the approval of the director, make requisitions upon  
15 the auditor for a sum to be known as an advance  
16 allowance account, in no case to exceed five percent of  
17 the total of the appropriations for any such spending  
18 unit, and the auditor shall draw his warrant upon the  
19 treasurer for such accounts; and all such advance  
20 allowance accounts shall be accounted for by the head  
21 of the spending unit or institution once every thirty  
22 days or oftener if required by the state auditor or  
23 director;

24 (3) Prescribe the manner in which commodities shall  
25 be purchased, delivered, stored and distributed;

26 (4) Prescribe the time for making requisitions and  
27 estimates of commodities, the future period which  
28 they are to cover, the form in which they shall be  
29 submitted and the manner of their authentication;

30 (5) Prescribe the manner of inspecting all deliveries

31 of commodities, and making chemical and physical  
32 tests of samples submitted with bids and samples of  
33 deliveries to determine compliance with specifications;

34 (6) Prescribe the amount of deposit or bond to be  
35 submitted with a bid or contract and the amount of  
36 deposit or bond to be given for the faithful perfor-  
37 mance of a contract;

38 (7) Prescribe a system whereby the director shall be  
39 required upon the payment by a vendor of an annual  
40 fee established by the director, to give notice to such  
41 vendor of all bid solicitations for commodities of the  
42 type with respect to which such vendor specified  
43 notice was to be given, but no such fee shall exceed  
44 the cost of giving the notice to such vendor, nor shall  
45 such fee exceed the sum of forty-five dollars per fiscal  
46 year, nor shall such fee be charged to persons seeking  
47 only reimbursement from a spending unit;

48 (8) Prescribe that each state contract entered into by  
49 the purchasing division shall contain provisions for  
50 liquidated damages, remedies, and/or provisions for  
51 the determination of the amount or amounts which  
52 the vendor shall owe as damages, in the event of  
53 default under such contract by such vendor; and

54 (9) Provide for such other matters as may be neces-  
55 sary to give effect to the foregoing rules and regula-  
56 tions and the provisions of this article.

57 (b) The director shall also adopt and amend rules  
58 and regulations to prescribe qualifications to be met by  
59 any person who, on and after the effective date of this  
60 section, is to be employed in the purchasing division as  
61 a state buyer. Such rules and regulations shall provide  
62 that no person shall be so employed as a state buyer  
63 unless such person at the time of employment either  
64 is (1) a graduate of an accredited college or university  
65 or (2) has at least four years' experience in purchasing  
66 for any unit of government or for any business,  
67 commercial or industrial enterprise. Those persons  
68 now serving as state buyers shall remain subject to the  
69 provisions of article six of chapter twenty-nine of this  
70 code, and those persons employed as state buyers on

71 and after the effective date of this section shall be  
72 subject to the provisions of said article ten.

**§5A-3-5. Purchasing section standard specifications —  
Promulgation and adoption by director;  
applicable to all purchases.**

1 The director shall promulgate and adopt standard  
2 specifications based on scientific and technical data for  
3 appropriate commodities, which shall establish the  
4 quality to which such commodities to be purchased  
5 and services to be contracted for by the state must  
6 conform. Standard specifications shall apply to every  
7 future purchase of or contract for the commodities  
8 described in the specifications. The purchases of no  
9 spending unit may be exempt from compliance with  
10 the standard specifications so established, but the  
11 director, whenever he deems it necessary and advis-  
12 able, may exempt therefrom the purchase of particu-  
13 lar items. The director shall update the standard  
14 specifications, as necessary.

**§5A-3-6. Purchasing section standard specifications —  
Advisers from spending units.**

1 The secretary may from time to time request any  
2 official or employee of any spending unit to aid and  
3 advise the director in formulating, revising or amend-  
4 ing the schedule of standard specifications provided for  
5 in section five of this article. Such official or employee  
6 shall act at the request of the secretary and shall be  
7 entitled to receive his necessary expenses incurred in  
8 compliance therewith, but shall receive no additional  
9 compensation therefor.

**§5A-3-7. Director to advise with heads of state and other  
institutions producing commodities, services  
and printing.**

1 The director shall advise with the heads of the  
2 various state and other institutions producing com-  
3 modities, services and printing, with the view to  
4 making these articles suitable for the needs of state  
5 spending units. Notwithstanding any provision of this  
6 code to the contrary, in the event of conflict between

7 state and other institutions producing commodities,  
8 services and printing with preference in accordance  
9 with the code, the director shall determine which  
10 institution shall provide a commodity, service or  
11 printing, basing such determination on quality, price  
12 and the efficient and economical operation of state  
13 government.

**§5A-3-8. Facilities of division available to local governmental bodies.**

1 The director shall make available the facilities and  
2 services of his division to counties, county schools,  
3 municipalities, urban mass transportation authorities,  
4 created pursuant to article twenty-seven, chapter eight  
5 of this code, mass transportation divisions of county  
6 and municipal governments, volunteer fire departments,  
7 and other local governmental bodies within  
8 this state. The actual expenses incurred thereby shall  
9 be paid by the local governmental body.

**§5A-3-9. Examination and testing of purchases; report required.**

1 Within the limit of funds available, the director, or  
2 some person appointed by the director, shall determine  
3 whether commodities delivered or services  
4 performed conform to contractual requirements.  
5 Nonconformity shall be reported to the director and  
6 chief officer of the spending unit purchasing such  
7 commodities or services for remedial action.

**§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.**

1 A purchase of and contract for commodities, printing  
2 and services shall be based, whenever possible, on  
3 competitive bids.

4 The director shall solicit sealed bids for the purchase  
5 of commodities and printing which is estimated to  
6 exceed ten thousand dollars. No spending unit shall  
7 issue a series of requisitions which would circumvent  
8 this ten thousand dollar maximum. The director may



9 permit bids by facsimile transmission machine to be  
10 accepted in lieu of sealed bids: *Provided*, That an  
11 original bid is received within two working days  
12 following the date specified for bid opening. Bids shall  
13 be obtained by public notice. The notice may be  
14 published by any advertising medium the director  
15 deems advisable. The director may also solicit sealed  
16 bids by sending requests by mail to prospective  
17 suppliers and by posting notice on a bulletin board in  
18 his office: *Provided, however*, That the director shall,  
19 without competitive bidding, purchase commodities  
20 and printing produced and offered for sale by non-  
21 profit workshops, as defined in section one, article one  
22 of this chapter, which are located in this state: *Pro-*  
23 *vided, further*, That such commodities and printing  
24 shall be of a fair market price and of like quality  
25 comparable to other commodities and printing other-  
26 wise available as determined by the director with the  
27 advice of the committee on the purchase of commod-  
28 ities and services from the handicapped.

29 Toward the end of effecting the making of contracts  
30 for commodities and printing of nonprofit workshops,  
31 the director shall employ a person whose responsibil-  
32 ities in addition to other duties shall be to identify all  
33 commodities and printing available for purchase from  
34 such nonprofit workshops, to evaluate the need of the  
35 state for such commodities and printing to coordinate  
36 the various nonprofit workshops in their production  
37 efforts and to make available to such workshops  
38 information about available opportunities within state  
39 government for purchase of commodities or printing  
40 which might be produced and sold by such workshops.  
41 Funds to employ such a person shall be included  
42 annually in the budget.

**§5A-3-11. Purchasing in open market on competitive bids;  
bids to be based on standard specifications;  
period for alteration or withdrawal of bids;  
awards to lowest responsible bidder; uniform  
bids; record of bids, and exception.**

1 The director may make a purchase of commodities,  
2 printing, and services of ten thousand dollars or less in

3 amount in the open market, but such purchase shall,  
4 wherever possible, be based on at least three compet-  
5 itive bids.

6 The director may authorize spending units to pur-  
7 chase commodities, printing and services in the  
8 amount of one thousand dollars in the open market  
9 without competitive bids.

10 Bids shall be based on the standard specifications  
11 promulgated and adopted in accordance with the  
12 provisions of section five of this article, and shall not  
13 be altered or withdrawn after the appointed hour for  
14 the opening of such bids. All open market orders,  
15 purchases based on advertised bid requests or con-  
16 tracts made by the director or by a state department  
17 shall be awarded to the lowest responsible bidder,  
18 taking into consideration the qualities of the articles to  
19 be supplied, their conformity with specifications, their  
20 suitability to the requirements of the government and  
21 the delivery terms: *Provided*, That state bids on school  
22 buses shall be accepted from all bidders who shall then  
23 be awarded contracts if they meet the state board's  
24 "Minimum Standards for Design and Equipment of  
25 School Buses". County boards of education may select  
26 from those bidders who have been awarded contracts  
27 and shall pay the difference between the state aid  
28 formula amount and the actual cost of bus replace-  
29 ment. Any or all bids may be rejected. If all bids  
30 received on a pending contract are for the same unit  
31 price or total amount, the director shall have authority  
32 to reject all bids, and to purchase the required  
33 commodities, printing and services in the open mar-  
34 ket, if the price paid in the open market does not  
35 exceed the bid prices.

36 All bidders submitting bid proposals to the purchas-  
37 ing division are required to submit an extra or  
38 duplicate copy to the state auditor.

39 Both copies must be received at the respective  
40 offices prior to the specified date and time of the bid  
41 openings. The failure to deliver or the nonreceipt of  
42 these bid forms at either of these offices prior to the

43 appointed date and hour are grounds for rejection of  
44 the bids. In the event of any deviation between the  
45 copies submitted to the purchasing division and the  
46 state auditor, such bids as to which there is such  
47 deviation shall be rejected, if the deviation relates to  
48 the quantity, quality or specifications of the commod-  
49 ities, printing or services to be furnished or to the  
50 price therefor or to the date of delivery or perfor-  
51 mance. After the award of the order or contract, the  
52 director, or someone appointed by him for that pur-  
53 pose, shall indicate upon the successful bid and its  
54 copy in the office of the state auditor that it was the  
55 successful bid. Thereafter, the copy of each bid in the  
56 possession of the director and the state auditor shall be  
57 maintained as a public record by both of them, shall  
58 be open to public inspection in the offices of both the  
59 director and the state auditor and shall not be des-  
60 troyed by either of them without the written consent  
61 of the legislative auditor: *Provided*, That the board of  
62 regents may certify in writing to the director the need  
63 for a specific item essential to a particular usage either  
64 for instructional or research purposes at an institution  
65 of higher education and the director upon review of  
66 such certification may provide for the purchase of said  
67 specific items in the open market without competitive  
68 bids. If the director permits bids by facsimile transmis-  
69 sion machine to be accepted in lieu of sealed bids  
70 pursuant to the provisions of section ten of this article,  
71 a duplicate facsimile transmission machine bid shall be  
72 transmitted to the state auditor pursuant to this  
73 section: *Provided, however*, That an original bid is  
74 received by the state auditor within two working days  
75 following the date specified for bid opening.

**§5A-3-12. Prequalification disclosure and payment of annual  
fee by vendors required; form and contents;  
register of vendors; false affidavits, etc.;  
penalties.**

1 The director shall not accept any bid received from  
2 any vendor unless the vendor has paid the annual fee  
3 specified in section four of this article and has filed  
4 with the director an affidavit of the vendor or the

5 affidavit of a member of the vendor's firm, or, if the  
6 vendor is a corporation, the affidavit of an officer,  
7 director or managing agent, of such corporation,  
8 disclosing the following information:

9 (1) If the vendor is an individual, his name and  
10 residence address, and, if he has associates or partners  
11 sharing in his business, their names and residence  
12 addresses;

13 (2) If the vendor is a firm, the name and residence  
14 address of each member, partner or associate of the  
15 firm;

16 (3) If the vendor is a corporation created under the  
17 laws of this state or authorized to do business in this  
18 state, the name and business address of the corpora-  
19 tion; the names and residence addresses of the presi-  
20 dent, vice-president, secretary, treasurer and general  
21 manager, if any, of the corporation; and the names and  
22 residence addresses of each stockholder of the corpora-  
23 tion owning or holding at least ten percent of the  
24 capital stock thereof;

25 (4) A statement of whether the vendor is acting as  
26 agent for some other individual, firm or corporation,  
27 and if so, a statement of the principal authorizing such  
28 representation shall be attached to the affidavit or  
29 whether the vendor is doing business as another  
30 entity;

31 (5) The vendor's latest Dun & Bradstreet rating, if  
32 there is any such rating as to such vendor; and

33 (6) A list of one or more banking institutions to serve  
34 as references for such vendor.

35 Whenever a change occurs in the information here-  
36 tofore submitted as required, such change shall be  
37 reported immediately in the same manner as required  
38 in the original disclosure affidavit.

39 The affidavit and information so received by the  
40 director shall be kept in a register of vendors which  
41 shall be a public record and open to public inspection  
42 during regular business hours in the director's office

43 and made readily available to the public at such time.

44 The director may waive the above requirements in  
45 the case of any corporation listed on any nationally  
46 recognized stock exchange and in the case of any  
47 vendor who or which is the sole source for the  
48 commodity in question.

49 Any person who makes such affidavit falsely or who  
50 shall knowingly file or cause to be filed with the  
51 director, an affidavit containing a false statement of a  
52 material fact or omitting any material fact, shall be  
53 guilty of a misdemeanor, and, upon conviction thereof,  
54 shall be fined not more than one thousand dollars,  
55 and, in the discretion of the court, confined in jail not  
56 more than one year. In any such case, an individual so  
57 convicted shall be adjudged forever incapable of  
58 holding any office of honor, trust or profit in this state,  
59 or of serving as a juror.

**§5A-3-13. Contracts to be approved as to form; filing.**

1 Contracts shall be approved as to form by the  
2 attorney general. A contract that requires more than  
3 six months for its fulfillment shall be filed with the  
4 state auditor.

**§5A-3-14. Copies of purchase orders sent to finance division;  
certificates required before contracts  
awarded.**

1 A copy of all purchase orders shall be transmitted to  
2 the director of the finance division so that the proper  
3 account may be encumbered before they are sent to  
4 the vendors. Except in an emergency, an order or  
5 contract shall not be awarded until it has been  
6 certified to the director by the secretary as director of  
7 the budget that the unencumbered balance in the  
8 appropriation concerned, in excess of all unpaid  
9 obligations, is sufficient to defray the cost of such  
10 order or contract.

**§5A-3-15. Emergency purchases in open market.**

1 The director may authorize, in writing, a state  
2 spending unit to purchase in the open market, without

3 filing requisition or estimate, specific commodities for  
 4 immediate delivery to meet bona fide emergencies  
 5 arising from unforeseen causes, including delays by  
 6 contractors, delays in transportation and unanticipated  
 7 volume of work. A report of any such purchase,  
 8 together with a record of the competitive bids upon  
 9 which it was based, shall be submitted at once to the  
 10 director by the head of the state spending unit con-  
 11 cerned, together with a full account of the circumstan-  
 12 ces of the emergency: *Provided*, That the director may  
 13 waive the need for the record of competitive bids.  
 14 Such report shall be entered on a record and shall be  
 15 open to public inspection.

**§5A-3-16. Special fund; purposes; how composed.**

1 There is hereby created a special revenue fund to be  
 2 administered by the director to facilitate the following  
 3 functions of the director:

4 (1) Purchase commodities in volume and maintain  
 5 stocks to supply the needs of state spending units; and

6 (2) Performance of mimeographing, photostating,  
 7 microfilming, multilithing, multigraphing and other  
 8 work needed by spending units as provided by section  
 9 twenty-seven of this article.

10 The amount of the fund may be fixed and changed  
 11 by the governor upon the recommendation of the  
 12 secretary. If at the end of each fiscal year the cash  
 13 balance plus value of commodity inventories on hand  
 14 exceeds the amount so fixed, the excess in cash shall  
 15 be transferred by the governor upon recommendation  
 16 of the secretary to the general revenue fund and  
 17 become a part of the general revenue of the state. The  
 18 fund shall be composed of the following:

19 (1) The cash balance and inventories of the fund  
 20 heretofore established by this section; and

21 (2) Charges made by the director for commodities  
 22 sold and services rendered to the state spending units  
 23 as herein described: *Provided*, That charges shall not  
 24 exceed total cost to the fund, which total cost shall  
 25 include storage, supplies, equipment and salaries and

26 wages of employees necessary to supply commodities  
27 and services in addition to purchase price of  
28 commodities.

**§5A-3-17. Purchases or contracts violating article void;  
personal liability.**

1 If a spending unit purchases or contracts for com-  
2 modities contrary to the provisions of this article or  
3 the rules and regulations made thereunder, such  
4 purchase or contract shall be void and of no effect. The  
5 head of such spending unit shall be personally liable  
6 for the costs of such purchase or contract, and, if  
7 already paid out of state funds, the amount thereof  
8 may be recovered in the name of the state in an  
9 appropriate action instituted therefor.

**§5A-3-18. Substituting for commodity bearing particular  
trade name or brand.**

1 If a spending unit requests the purchase of a com-  
2 modity bearing a particular trade name or brand, and  
3 if the commodity is covered by standard specifications  
4 adopted as provided by section five of this article, the  
5 director may substitute a commodity bearing a differ-  
6 ent trade name or brand, if the substituted commodity  
7 reasonably conforms to the adopted standard specifica-  
8 tions and can be obtained at an equal or lower price.

**§5A-3-19. Purchases from federal government and other  
sources.**

1 Notwithstanding any other provision of this article,  
2 the director may, upon the recommendation of a state  
3 spending unit, make purchases from the federal  
4 government, from federal government contracts or  
5 from the university of West Virginia board of trustees  
6 or board of directors of the state college system  
7 contracts, if available and financially advantageous.

**§5A-3-20. Spending units to submit lists of expendable  
commodities.**

1 The head of every spending unit shall submit a list  
2 of expendable commodities such spending unit has on  
3 hand whenever requested to do so by the director.

**§5A-3-21. Contracts for public printing and paper for spending units; printing plants at institutions.**

1 The director shall contract for public printing and  
2 for printing paper for the use of spending units in the  
3 manner provided for contracts under sections ten  
4 through nineteen of this article, and in accordance  
5 with the specifications adopted as provided by section  
6 five of this article: *Provided*, That the provisions of  
7 this article shall not be construed to prohibit the state  
8 from maintaining printing plants for the purpose of  
9 instruction or for printing for a state spending unit at  
10 educational, benevolent, penal or correctional  
11 institutions.

**§5A-3-22. Legislative printing.**

1 Notwithstanding any other provision of this article,  
2 the letting of all contracts for legislative printing shall  
3 be subject only to the provisions of this section.

4 Upon request of the Legislature, or either house  
5 thereof, all contracts for legislative printing shall be let  
6 on competitive bids by the director to the lowest  
7 responsible bidder. Each such contract shall be subject  
8 to the approval of the governor, and in case of his  
9 disapproval the contract shall be relet on competitive  
10 bids submitted in the same manner as the original bids  
11 on the contract that was disapproved. Each bid on  
12 every such contract shall be within the maximum  
13 limits that may be fixed from time to time by concur-  
14 rent resolution of the Legislature. The clerk of the  
15 senate and the clerk of the house of delegates shall  
16 have exclusive control of all printing authorized by  
17 their respective legislative bodies, and shall approve  
18 the specifications included in any contract before an  
19 invitation for bids is released by the director of  
20 purchasing. Before presenting for payment any bill for  
21 such legislative printing, the printer shall have the  
22 same approved by the purchasing division as correct  
23 and according to contract specifications. A copy of all  
24 bills for legislative printing shall be furnished the  
25 clerk of the house for which such printing was done.  
26 When properly approved bills are presented to the



27 clerk of the senate, or to the clerk of the house of  
28 delegates, he shall draw his requisition upon the  
29 auditor in the amount of the bill, payable from the  
30 legislative printing fund, and the auditor shall honor  
31 the requisition and issue to the printer a state draft  
32 therefor.

**§5A-3-23. Publication of reports of supreme court of appeals.**

1 Notwithstanding any of the provisions of this article,  
2 the official reporter of the supreme court of appeals  
3 shall have charge and supervision of the printing and  
4 binding of the reports of the decisions of the supreme  
5 court of appeals of the state, and shall contract for  
6 their publication in the same manner that the director  
7 of the purchasing division contracts under sections ten  
8 through nineteen of this article. Such contract shall  
9 provide for the publication of such number of copies as  
10 the reporter and the supreme court of appeals may  
11 jointly direct. If the reporter and the supreme court of  
12 appeals do not agree on the number of copies for  
13 which the publication contract shall provide, the  
14 contract shall provide for the publication of the  
15 greater number of copies directed by either the  
16 reporter or the supreme court of appeals. In no event  
17 shall the number of copies published exceed one  
18 thousand five hundred. Copies of the reports of the  
19 decisions of the supreme court of appeals shall be on  
20 such paper and be bound in accordance with directions  
21 and specifications specified by the reporter by and  
22 with the concurrence of the court. The size of type and  
23 page shall be prescribed by the reporter with the  
24 concurrence of the court. A volume shall be published  
25 according to the terms of the contract whenever  
26 ordered by the court. The reporter shall secure the  
27 copyright of each volume for the benefit of the state.  
28 The reports shall be styled "West Virginia Reports."

29 The printing and binding of the reports shall be  
30 done under the direction of and in the manner  
31 prescribed by the reporter, subject to the control of  
32 the court. The reporter shall prefix to the printed  
33 report of each case the dates when the same was  
34 submitted and decided. Each volume shall, if practic-

35 able, contain the reports of at least eighty cases  
36 decided by the court, and shall contain approximately  
37 one thousand pages unless otherwise ordered by the  
38 court, exclusive of the index and table of cases  
39 reported and cited. Galley sheets or proof sheets shall  
40 be furnished by the printer to the reporter in such  
41 number as may be required by the reporter for the  
42 purposes of this section. It shall be the duty of the  
43 reporter to proof such galley sheets or proof sheets  
44 against the various cases, including the court's syllabi,  
45 as such cases and the court's syllabi appear in the most  
46 recent bound volume of the appropriate regional  
47 reporter in which such cases are reported. Neither  
48 galley sheets nor proof sheets need be submitted to the  
49 court or the clerk thereof for any purpose. Thereafter  
50 the reporter shall make such corrections and modifica-  
51 tions as he shall deem appropriate and all such  
52 corrections and modifications shall be made by the  
53 printer as the reporter may direct. If the work is not  
54 done in the manner required by law, the reporter  
55 shall not approve the volume and shall not accept it.

56 The reports of the decisions of the supreme court of  
57 appeals may be published in pamphlet form in  
58 advance of the publication of the bound volumes of the  
59 "West Virginia Reports", periodically, or at such times  
60 as may be directed by the reporter and the supreme  
61 court of appeals. The reporter shall secure the copy-  
62 right of each pamphlet of opinions so published in  
63 advance. Each pamphlet shall contain the report of  
64 such number of cases as the supreme court of appeals  
65 and the reporter shall deem advisable.

66 The contract for the publication of such advance  
67 sheets shall be made in the manner provided for the  
68 publication of bound volumes of the "West Virginia  
69 Reports".

70 A charge of not less than the actual cost of printing  
71 and distribution shall be made for such advance  
72 sheets.

**§5A-3-24. Publication of departmental reports; uniform standards; limiting number of publications; requiring division to perform printing and binding.**

1 The director shall have charge and supervision of  
2 the printing and binding of all reports transmitted to  
3 the governor as required by section twenty, article  
4 one, chapter five of this code. Said reports shall be  
5 printed annually as soon as possible after the close of  
6 the fiscal year.

7 The director shall specify the uniform maximum  
8 standards as to form and format to be used in the  
9 preparation and publication of annual reports by the  
10 various departments, agencies, boards, commissions  
11 and institutions.

12 The number of copies of such reports shall be  
13 limited to the minimum quantity necessary for office  
14 use of the reporting spending unit and for legally  
15 required distribution and exchange, the exact number  
16 of copies of such reports to be expressly subject to the  
17 approval of the governor.

18 The director shall furnish to each spending unit  
19 sufficient copies of its report to satisfy the above  
20 purposes within the limits set by the governor.

21 The printing and binding of all such reports shall be  
22 done by the department of administration in the  
23 printing shop maintained by the department.

24 Subject to the approval of the secretary of adminis-  
25 tration and the governor, the director shall have  
26 authority to limit the number of any other report,  
27 bulletin and other publication ordered to be printed by  
28 each spending unit.

29 Nothing herein shall be construed as preventing the  
30 director from utilizing less expensive methods of  
31 printing and binding than those prescribed above.

**§5A-3-25. Printing, binding and stationery to be paid from current expense appropriations.**

1 Printing, binding and stationery for all spending

2 units shall be paid from the current expense or  
3 unclassified appropriations for such spending units.

**§5A-3-26. Custodian of reports and acts; delivery to state  
law librarian for distribution; sale.**

1 The director shall be custodian of the "West Virginia  
2 Reports" after they are printed and bound and  
3 approved by the reporter, and of the acts of the  
4 Legislature after they are printed and bound and  
5 approved by the clerk of the house of delegates. As  
6 soon as practicable after any new volume of such  
7 reports or acts has been delivered to the director, not  
8 including reprints of former volumes, he shall deliver  
9 to the state law librarian sufficient copies to enable  
10 him to make distribution thereof in the manner  
11 prescribed by sections five and six, article eight,  
12 chapter fifty-one of this code.

13 The director shall sell such copies of the reports and  
14 acts as remain after the distribution provided by law  
15 has been made at a price to be fixed by him with the  
16 approval of the secretary, but in no case shall such  
17 price be less than the actual cost to the state of the  
18 publication thereof.

**§5A-3-27. Director to establish central duplicating office;  
exemption of particular spending units; con-  
tracts for duplicating.**

1 Mimeographing, photostating, microfilming, multili-  
2 thing, multigraphing, and other duplicating work  
3 required to be done by or for any spending unit shall  
4 be done by a central duplicating office, which office  
5 shall be established by and under the supervision of  
6 the director.

7 Mimeographing, photostating, microfilming, multili-  
8 thing, multigraphing, and other duplicating equip-  
9 ment, supplies, personnel and the funds appropriated  
10 therefor shall be transferred to the central duplicating  
11 office, upon determination by the director to  
12 consolidate.

13 If the director is of the opinion that any spending  
14 unit is capable of doing such duplicating work as may

15 be required by such particular spending unit more  
16 efficiently and economically than can the central  
17 duplicating office, he may, in his discretion, exempt  
18 such particular spending unit from the provisions of  
19 this section; or if the director believes economy or  
20 efficiency can be effected by letting such work or any  
21 part thereof to contract, then he may do so in the  
22 manner provided for contracts under sections ten  
23 through nineteen of this article.

**§5A-3-28. Financial interest of secretary, etc.; receiving  
reward from interested party; penalty; appli-  
cation of bribery statute.**

1 Neither the secretary, nor the director nor any  
2 employee of the division of purchasing, shall be  
3 financially interested, or have any beneficial personal  
4 interest, directly or indirectly, in the purchase of any  
5 commodities or printing, nor in any firm, partnership,  
6 corporation or association furnishing them. Neither  
7 the secretary, nor the director nor any employee of  
8 the division of purchasing shall accept or receive  
9 directly or indirectly from any person, firm or corpo-  
10 ration, known by such secretary, director or employee  
11 to be interested in any bid, contract or purchase, by  
12 rebate, gift or otherwise, any money or other thing of  
13 value whatsoever, or any promise, obligation or  
14 contract for future reward, or compensation.

15 A person who violates this section shall be guilty of  
16 a misdemeanor, and, upon conviction thereof, shall be  
17 confined in jail not less than three months nor more  
18 than one year, or fined not less than fifty nor more  
19 than one thousand dollars, or both, in the discretion of  
20 the court: *Provided*, That any person who violates any  
21 of the provisions of the last sentence of the first  
22 paragraph of this section under circumstances consti-  
23 tuting the crime of bribery under the provisions of  
24 section three, article five-a, chapter sixty-one of this  
25 code, shall, upon conviction of bribery, be punished as  
26 provided in said article five-a.

**§5A-3-29. Penalty for violation of article.**

1 Any person who violates a provision of this article,

2 except where another penalty is prescribed, shall be  
3 guilty of a misdemeanor, and, upon conviction thereof,  
4 shall be confined in jail not less than ten days nor  
5 more than one year, or fined not less than ten nor  
6 more than five hundred dollars, or both, in the  
7 discretion of the court.

**§5A-3-30. Obtaining money and property under false pretenses or by fraud from state; penalties.**

1 It shall be unlawful for any person to obtain from  
2 the state under any contract made under the provi-  
3 sions of this article, by false pretense, token or  
4 representation, or by delivery of inferior commodities,  
5 with intent to defraud, any money, goods or other  
6 property, and upon violation thereof, such person shall  
7 be guilty of a felony, and, upon conviction thereof,  
8 shall be confined in the penitentiary not less than one  
9 year nor more than five years, and be fined not  
10 exceeding one thousand dollars.

**§5A-3-31. Corrupt combinations, collusions or conspiracies prohibited; penalties.**

1 It shall be unlawful for any person to corruptly  
2 combine, collude or conspire with one or more other  
3 persons with respect to the purchasing or supplying of  
4 commodities or printing to the state under the provi-  
5 sions of this article if the purpose or effect of such  
6 combination, collusion or conspiracy is either to (1)  
7 lessen competition among prospective vendors, or (2)  
8 cause the state to pay a higher price for such commod-  
9 ities or printing than would be or would have been  
10 paid in the absence of such combination, collusion or  
11 conspiracy, or (3) cause one prospective vendor or  
12 vendors to be preferred over one or more other  
13 prospective vendor or vendors. Any person who  
14 violates any provision of this section shall be guilty of  
15 a felony, and, upon conviction thereof, shall be con-  
16 fined in the penitentiary not less than one nor more  
17 than five years, and be fined not exceeding five  
18 thousand dollars.

**§5A-3-32. Power of director to suspend right to bid; notice of suspension.**

1 The director shall have the power and authority, to

2 suspend, for a period not to exceed one year, the right  
3 and privilege of a vendor to bid on state purchases  
4 when the director has reason to believe that such  
5 vendor has violated any of the provisions of the  
6 purchasing law or the rules and regulations of the  
7 director. Every vendor whose right to bid has been so  
8 suspended shall be notified thereof by a letter posted  
9 by certified mail containing the reason for such  
10 suspension.

**§5A-3-33. Review of suspension by secretary.**

1 Any vendor whose right to bid on state purchases  
2 has been suspended by the director under the author-  
3 ity of the preceding section shall have the right to  
4 have the director's action reviewed by the secretary,  
5 who shall have the power and authority to set aside  
6 such suspension.

**§5A-3-34. Authority over inventories and property.**

1 The director shall, under the direction and supervi-  
2 sion of the secretary, have full authority over inven-  
3 tories and property.

**§5A-3-35. Submission of annual inventories.**

1 The head of every spending unit of state govern-  
2 ment shall, on or before July fifteenth of each year,  
3 file with the director an inventory of all real and  
4 personal property, and of all equipment, supplies and  
5 commodities in its possession as of the close of the last  
6 fiscal year, as directed by the director.

**§5A-3-36. Inventory of removable property; maintenance  
and repair of office furniture, machinery and  
equipment.**

1 The director shall have the power and duty to:  
2 (1) Make and keep current an inventory of all  
3 removable property belonging to the state. Such  
4 inventory shall be kept on file in the office of the  
5 director as a public record. The inventory shall  
6 disclose the name and address of the vendor, the date  
7 of the purchase, the price paid for the property

8 therein described and the disposition thereof;

9 (2) Provide for the maintenance and repair of all  
10 office furniture, machinery and equipment belonging  
11 to the state, either by employing personnel and  
12 facilities under his direction or by contracting with  
13 state agencies or private parties.

**§5A-3-37. Preference for resident vendors; preference for  
vendors employing state residents;  
exceptions.**

1 (a) Other provisions of this article notwithstanding,  
2 effective the first day of July, one thousand nine  
3 hundred ninety, through the thirtieth day of June, one  
4 thousand nine hundred ninety-four, in any instance  
5 involving the purchase of construction services or for  
6 the construction, repair or improvement of any build-  
7 ings or portions thereof, where the total aggregate cost  
8 thereof, whether one or a series of contracts are  
9 awarded in completing the project, is estimated by the  
10 director to exceed the sum of fifty thousand dollars,  
11 and where the director or any state department is  
12 required under the provisions of this article to make  
13 such purchase, construction, repair or improvement  
14 upon competitive bids, the successful bid shall be  
15 determined as provided in this section. The secretary  
16 of the department of tax and revenue shall promulgate  
17 such rules and regulations necessary to (i) determine  
18 that vendors have met the residence requirements  
19 described in this section; (ii) establish the procedure  
20 for vendors to certify such residency requirements at  
21 the time of submitting their bids; (iii) establish a  
22 procedure to audit bids which make a claim for  
23 preference permitted by this section and to reject  
24 noncomplying bids; and (iv) otherwise accomplish the  
25 objectives of this section. In prescribing such rules and  
26 regulations, the secretary shall use a strict construc-  
27 tion of the residence requirements set forth in this  
28 section. For purposes of this section, a successful bid  
29 shall be determined and accepted as follows:

30 (1) From an individual resident vendor who has  
31 resided in West Virginia continuously for the four



32 years immediately preceding the date on which the  
33 bid is submitted or from a partnership, association or  
34 corporation resident vendor which has maintained its  
35 headquarters or principal place of business within  
36 West Virginia continuously for four years immediately  
37 preceding the date on which the bid is submitted, if  
38 such resident vendor's bid does not exceed the lowest  
39 qualified bid from a nonresident vendor by more than  
40 two and one-half percent of the latter bid, and if such  
41 resident vendor has made written claim for such  
42 preference at the time the bid was submitted: *Pro-*  
43 *vided*, That for purposes of this subparagraph (1), any  
44 partnership, association or corporation resident vendor  
45 of this state, which does not meet the requirements of  
46 this subparagraph solely because of the continuous  
47 four-year residence requirement, shall be deemed to  
48 meet such requirement if at least eighty percent of the  
49 ownership interest of such resident vendor is held by  
50 another individual, partnership, association or corpora-  
51 tion resident vendor who otherwise meets the require-  
52 ments of this subparagraph, including the continuous  
53 four-year residency requirement: *Provided, however,*  
54 That the secretary of the department of tax and  
55 revenue shall promulgate rules and regulations relat-  
56 ing to attribution of ownership among several such  
57 resident vendors for purposes of determining the  
58 eighty percent ownership requirement; or

59 (2) From a resident or nonresident vendor, if, for  
60 purposes of producing or distributing the commodities  
61 or completing the project which is the subject of such  
62 vendor's bid and continuously over the entire term of  
63 such project, on average at least sixty percent of such  
64 vendor's employees are residents of West Virginia who  
65 have resided in the state continuously for the two  
66 immediately preceding years and such vendor's bid  
67 does not exceed the lowest qualified bid from a  
68 nonresident vendor by more than two and one-half  
69 percent of the latter bid, and if such vendor has  
70 certified the residency requirements above and made  
71 written claim for such preference, at the time the bid  
72 was submitted; or,

73 (3) From a vendor who meets the requirements of  
74 both subparagraphs (1) and (2) set forth above, if such  
75 bid does not exceed the lowest qualified bid from a  
76 nonresident vendor by more than five percent of the  
77 latter bid, and if such resident vendor has certified the  
78 residency requirements above and made written claim  
79 for such preference at the time the bid was submitted.

80 (b) If the secretary of the department of tax and  
81 revenue determines under any audit procedure that a  
82 vendor who received a preference under this section  
83 fails to continue to meet the requirements for such  
84 preference at any time during the term of the project  
85 for which such preference was received the secretary  
86 may: (1) reject such vendor's bid; or (2) assess a  
87 penalty against such vendor of not more than five  
88 percent of such vendor's bid on the project.

89 (c) Political subdivisions of the state including  
90 county boards of education may grant the same  
91 preferences to any vendor of this state who has made  
92 a written claim for such preference at the time a bid  
93 is submitted, but for the purposes of this subsection, in  
94 determining the lowest bid, any political subdivision  
95 shall exclude from the bid the amount of business  
96 occupation taxes which must be paid by a resident  
97 vendor to any municipality within the county compris-  
98 ing or located within such subdivision as a result of  
99 being awarded the contract which is the object of the  
100 bid; in the case of a bid received by a municipality, the  
101 municipality shall exclude only such business and  
102 occupation taxes as will be paid to such municipality:  
103 *Provided*, That prior to soliciting any such competitive  
104 bids, any such political subdivision may, by majority  
105 vote of all its members in a public meeting where all  
106 such votes shall be recorded, elect not to exclude from  
107 the bid the amount of business and occupation taxes as  
108 provided herein.

109 (d) If any of the requirements or provisions set forth  
110 in this section jeopardize the receipt of federal funds,  
111 then such requirement or provisions shall be void and  
112 of no force and effect for that specific project.

113 (e) If any provision or clause of this section or  
114 application thereof to any person or circumstance is  
115 held invalid, such invalidity shall not affect other  
116 provisions or applications of this section which can be  
117 given effect without the invalid provision or applica-  
118 tion, and to this end the provisions of this section are  
119 declared to be severable.

120 (f) This section may be cited as the "Jobs for West  
121 Virginians Act of 1990".

**§5A-3-37a. Preference for resident vendors; exceptions;  
reciprocal preference.**

1 Except where the provisions of section thirty-seven  
2 of this article may apply, in any instance where a  
3 purchase of commodities or printing by the director or  
4 by a state spending unit is required under the provi-  
5 sions of this article to be made upon competitive bids,  
6 preference shall be given to vendors resident in West  
7 Virginia as against vendors resident in any state that  
8 gives or requires a preference for the purchase of  
9 commodities or printing produced, manufactured or  
10 performed in that state. The amount of the preference  
11 shall be equal to the amount of the preference applied  
12 by the other state.

13 A vendor shall be deemed to be a resident of this  
14 state if such vendor is an individual, partnership,  
15 association or corporation in good standing under the  
16 laws of the state of West Virginia who (1) is a resident  
17 of the state or a foreign corporation authorized to  
18 transact business in the state; (2) maintains an office in  
19 the state; (3) has paid personal property taxes pursuant  
20 to article five, chapter eleven of this code on equip-  
21 ment used in the regular course of supplying services  
22 of the general type offered; and (4) has paid business  
23 taxes pursuant to chapter eleven of this code. In  
24 addition, in the case of a vendor selling tangible  
25 personal property, a resident vendor is one who has a  
26 stock of materials held in West Virginia for sale in the  
27 ordinary course of business, which stock is of the  
28 general type offered, and which is reasonably suffi-  
29 cient in quantity to meet the ordinary requirements of

30 customers.

31 If any of the requirements or provisions set forth in  
32 this section jeopardize the receipt of federal funds,  
33 then such requirements or provision shall be void and  
34 of no force and effect.

**§5A-3-38. Leases for space to be made in accordance with article; exception.**

1 Notwithstanding any other provision of this code, no  
2 department, agency or institution of state government  
3 shall lease, or offer to lease, as lessee, any grounds,  
4 buildings, office or other space except in accordance  
5 with this article: *Provided*, That the provisions of this  
6 article except as to office space shall not apply in any  
7 respect whatever to the division of highways of the  
8 department of transportation.

**§5A-3-39. Leasing of space by secretary; delegation of authority.**

1 The secretary is authorized to lease, in the name of  
2 the state, any grounds, buildings, office or other space  
3 required by any department, agency or institution of  
4 state government: *Provided*, That the secretary may  
5 expressly delegate, in writing, the authority granted to  
6 him by this article to the appropriate department,  
7 agency or institution of state government when the  
8 rental and other costs to the state do not exceed the  
9 sum specified by regulation in any one fiscal year or  
10 when necessary to meet bona fide emergencies arising  
11 from unforeseen causes.

**§5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.**

1 The secretary shall have sole authority to select and  
2 to acquire by contract or lease, in the name of the  
3 state, all grounds, buildings, office space or other  
4 space, the rental of which is necessarily required by  
5 any spending unit, upon a certificate from the chief  
6 executive officer or his designee of said spending unit  
7 that the grounds, buildings, office space or other space  
8 requested is necessarily required for the proper

9 function of said spending unit, that the spending unit  
10 will be responsible for all rent and other necessary  
11 payments in connection with the contract or lease and  
12 that satisfactory grounds, buildings, office space or  
13 other space is not available on grounds and in build-  
14 ings now owned or leased by the state. The secretary  
15 shall, before executing any rental contract or lease,  
16 determine the fair rental value for the rental of the  
17 requested grounds, buildings, office space or other  
18 space, in the condition in which they exist, and shall  
19 contract for or lease said premises at a price not to  
20 exceed the fair rental value thereof.

21 The secretary is hereby authorized to enter into  
22 long-term agreements for buildings, land and space for  
23 periods longer than one fiscal year: *Provided*, That  
24 such long-term lease agreements shall not be for  
25 periods in excess of forty years and shall contain, in  
26 substance, all the following provisions: (1) That the  
27 department of administration, as lessee, shall have the  
28 right to cancel the lease without further obligation on  
29 the part of the lessee upon giving thirty days' written  
30 notice to the lessor, such notice being given at least  
31 thirty days prior to the last day of the succeeding  
32 month; (2) that the lease shall be considered canceled  
33 without further obligation on the part of the lessee if  
34 the state Legislature or the federal government should  
35 fail to appropriate sufficient funds therefor or should  
36 otherwise act to impair the lease or cause it to be  
37 canceled; and (3) that the lease shall be considered  
38 renewed for each ensuing fiscal year during the term  
39 of the lease unless it is canceled by the department of  
40 administration before the end of the then current  
41 fiscal year.

42 A spending unit which is granted any grounds,  
43 buildings, office space or other space leased in accor-  
44 dance with this section may not order or make  
45 permanent changes of any type thereto, unless the  
46 secretary has first determined that the change is  
47 necessary for the proper, efficient and economically  
48 sound operation of the spending unit. For purposes of  
49 this section, a "permanent change" means any addi-

50 tion, alteration, improvement, remodeling, repair or  
51 other change involving the expenditure of state funds  
52 for the installation of any tangible thing which cannot  
53 be economically removed from the grounds, buildings,  
54 office space or other space when vacated by the  
55 spending unit.

**§5A-3-41. Leases and other instruments for space signed by  
secretary or director; approval as to form;  
filing.**

1 Leases and other instruments for grounds, buildings,  
2 office or other space shall be signed by the secretary  
3 or director in the name of the state. They shall be  
4 approved as to form by the attorney general. A lease  
5 or other instrument for grounds, buildings, office or  
6 other space that contains a term, including any  
7 options, of more than six months for its fulfillment  
8 shall be filed with the state auditor.

**§5A-3-42. Leasing for space rules and regulations.**

1 The secretary shall have the power and authority to  
2 promulgate such rules and regulations as he may  
3 deem necessary to carry out the provisions of sections  
4 thirty-eight, thirty-nine, forty and forty-one of this  
5 article.

**§5A-3-43. State agency for surplus property created.**

1 There is hereby established within the purchasing  
2 division and under the supervision of the director of  
3 the purchasing division the state agency for surplus  
4 property.

**§5A-3-44. Authority and duties of state agency for surplus  
property.**

1 (a) The state agency for surplus property is hereby  
2 authorized and empowered (1) to acquire from the  
3 United States of America such property, including  
4 equipment, materials, books or other supplies under  
5 the control of any department or agency of the United  
6 States of America as may be usable and necessary for  
7 educational, fire protection and prevention, rescue, or  
8 public health purposes, including research; (2) to

9 warehouse property acquired; and (3) to distribute the  
10 property to tax-supported medical institutions, hospi-  
11 tals, clinics, fire departments, rescue squads, health  
12 centers, school systems, schools, colleges and universi-  
13 ties within the state, and to other nonprofit medical  
14 institutions, hospitals, clinics, volunteer fire depart-  
15 ments, volunteer rescue squads, health centers,  
16 schools, colleges and universities within the state  
17 which have been held exempt from taxation under the  
18 Internal Revenue Code of 1986, as amended.

19 (b) For the purpose of executing its authority under  
20 this article, the state agency for surplus property is  
21 authorized and empowered to adopt, amend or rescind  
22 rules and regulations as may be deemed necessary,  
23 and take other action necessary and suitable in the  
24 administration of this article, including the enactment  
25 and promulgation of rules and regulations necessary to  
26 bring this article and its administration into confor-  
27 mity with any federal statutes or rules and regulations  
28 promulgated under federal statutes for the acquisition  
29 and disposition of surplus property.

30 (c) The state agency for surplus property is autho-  
31 rized and empowered to appoint advisory boards or  
32 committees necessary to the end that this article and  
33 the rules and regulations promulgated hereunder  
34 conform with federal statutes and rules and regula-  
35 tions promulgated under federal statutes for the  
36 acquisition and disposition of surplus property.

37 (d) The state agency for surplus property is autho-  
38 rized and empowered to take action, make expendi-  
39 tures and enter into contracts, agreements and under-  
40 takings for and in the name of the state, require  
41 reports, and make investigations as may be required  
42 by law or regulation of the United States of America  
43 in connection with the receipt, warehousing and  
44 distribution of property received by the state agency  
45 for surplus property from the United States of  
46 America.

47 (e) The state agency for surplus property is autho-  
48 rized and empowered to act as a clearinghouse of

49 information for the public and private nonprofit  
 50 institutions and agencies referred to in subsection (a)  
 51 of this section, to locate property available for acqui-  
 52 sition from the United States of America, to ascertain  
 53 the terms and conditions under which the property  
 54 may be obtained, to receive requests from the above-  
 55 mentioned institutions and agencies and to transmit to  
 56 them all available information in reference to the  
 57 property, and to aid and assist the institutions and  
 58 agencies in every way possible in the consummation  
 59 or acquisition of transactions hereunder.

60 (f) The state agency for surplus property shall  
 61 cooperate to the fullest extent consistent with the  
 62 provisions of this article, with the departments or  
 63 agencies of the United States of America and shall  
 64 make reports in the form and containing the informa-  
 65 tion the United States of America or any of its  
 66 departments or agencies may from time to time  
 67 require, and it shall comply with the laws of the  
 68 United States of America and the rules and regula-  
 69 tions of any of the departments or agencies of the  
 70 United States of America governing the allocation,  
 71 transfer, use or accounting for property donable or  
 72 donated to the state.

**§5A-3-45. Disposition of surplus state property; semiannual  
 report; application of proceeds from sale.**

1 The agency shall have the exclusive power and  
 2 authority to make disposition of commodities or  
 3 expendable commodities now owned or in the future  
 4 acquired by the state when any such commodities are  
 5 or become obsolete or unusable or are not being used  
 6 or should be replaced.

7 The agency shall determine what commodities or  
 8 expendable commodities should be disposed of and  
 9 shall make such disposition in the manner which will  
 10 be most advantageous to the state, either by transfer-  
 11 ring the particular commodities or expendable com-  
 12 modities between departments, by selling such com-  
 13 modities to county commissions, county boards of  
 14 education, municipalities, public service districts,



15 county building commissions, airport authorities, parks  
16 and recreation commissions, nonprofit domestic corpo-  
17 rations qualified as tax exempt under section 501 (c)(3)  
18 of the Internal Revenue Code of 1986, as amended, and  
19 volunteer fire departments in this state, when such  
20 volunteer fire departments have been held exempt  
21 from taxation under section 501 (c) of the United  
22 States Internal Revenue Code, by trading in such  
23 commodities as a part payment on the purchase of  
24 new commodities, or by sale thereof to the highest  
25 bidder by means of public auctions or sealed bids, after  
26 having first advertised the time, terms and place of  
27 such sale as a Class II legal advertisement in com-  
28 pliance with the provisions of article three, chapter  
29 fifty-nine of this code, and the publication area for  
30 such publication shall be the county wherein the sale  
31 is to be conducted. The sale may also be advertised in  
32 such other advertising media as the agency may deem  
33 advisable. The agency may sell to the highest bidder or  
34 to any one or more of the highest bidders, if there is  
35 more than one, or, if the best interest of the state will  
36 be served, reject all bids.

37 Upon the transfer of commodities or expendable  
38 commodities between departments, or upon the sale  
39 thereof to an eligible organization described above, the  
40 agency shall set the price to be paid by the receiving  
41 eligible organization, with due consideration given to  
42 current market prices.

43 The agency may sell expendable, obsolete or unused  
44 motor vehicles owned by the state to an eligible  
45 organization, other than volunteer fire departments.  
46 In addition, the agency may sell expendable, obsolete  
47 or unused motor vehicles owned by the state with a  
48 gross weight in excess of four thousand pounds to an  
49 eligible volunteer fire department. The agency, with  
50 due consideration given to current market prices, shall  
51 set the price to be paid by the receiving eligible  
52 organization, for motor vehicles sold pursuant to this  
53 provision: *Provided*, That the sale price of any motor  
54 vehicle sold to an eligible organization shall not be less  
55 than the "average loan" value, as published in the

56 most recent available eastern edition of the National  
57 Automobile Dealer's Association (N.A.D.A.) Official  
58 Used Car Guide, if such a value is available, unless the  
59 fair market value of the vehicle is less than the  
60 N.A.D.A. "average loan" value, in which case the  
61 vehicle may be sold for less than the "average loan"  
62 value. Such fair market value must be based on a  
63 thorough inspection of the vehicle by an employee of  
64 the agency who shall consider the mileage of the  
65 vehicle, and the condition of the body, engine and tires  
66 as indicators of its fair market value. If no such value  
67 is available, the agency shall set the price to be paid  
68 by the receiving eligible organization with due consid-  
69 eration given to current market prices. The duly  
70 authorized representative of such eligible organization,  
71 for whom such motor vehicle or other similar surplus  
72 equipment is purchased or otherwise obtained, shall  
73 cause ownership and proper title thereto to be vested  
74 only in the official name of the authorized governing  
75 body for whom the purchase or transfer was made.  
76 Such ownership or title, or both, shall remain in the  
77 possession of that governing body and be nontransfer-  
78 able for a period of not less than one year from the  
79 date of such purchase or transfer. Resale or transfer of  
80 ownership of such motor vehicle or equipment prior to  
81 an elapsed period of one year may be made only by  
82 reason of certified unserviceability.

83 The agency shall report to the legislative auditor,  
84 semiannually, all sales of commodities or expendable  
85 commodities made during the preceding six months to  
86 eligible organizations. The report shall include a  
87 description of the commodities sold, the price paid by  
88 the eligible organization, which received the commod-  
89 ities; and the report shall show to whom each com-  
90 modity was sold.

91 The proceeds of such sales or transfers shall be  
92 deposited in the state treasury to the credit on a pro  
93 rata basis of the fund or funds out of which the  
94 purchase of the particular commodities or expendable  
95 commodities was made: *Provided*, That the agency  
96 may charge and assess fees reasonably related to the

97 costs of care and handling with respect to the transfer,  
98 warehousing, sale and distribution of state property  
99 disposed of or sold pursuant to the provisions of this  
100 section.

**§5A-3-46. Warehousing, transfer, etc., charges.**

1 Any charges made or fees assessed by the state  
2 agency for surplus property for the acquisition, ware-  
3 housing, distribution or transfer of any property  
4 acquired by donation from the United States of  
5 America for educational purposes or public health  
6 purposes, including research, shall be limited to those  
7 reasonably related to the costs of care and handling in  
8 respect to its acquisition, receipts, warehousing,  
9 distribution or transfer by the state agency for surplus  
10 property. All charges designated herein shall be used  
11 by the state agency for surplus property to defray the  
12 general operating expenses of the state agency for  
13 surplus property.

**§5A-3-47. Department of agriculture and other agencies  
exempted.**

1 Notwithstanding any provisions or limitations of this  
2 article, the state department of agriculture and any  
3 other state departments or agencies hereafter so  
4 designated are authorized and empowered to distrib-  
5 ute food, food stamps, surplus commodities and agri-  
6 cultural products under contracts and agreements  
7 with the federal government or any of its departments  
8 or agencies, and the state department of agriculture  
9 and any other state departments or agencies hereafter  
10 so designated are authorized and empowered to adopt  
11 rules and regulations in order to conform with federal  
12 requirements and standards for such distribution and  
13 also for the proper distribution of such food, food  
14 stamps, commodities and agricultural products. To the  
15 extent set forth in this section, the provisions of this  
16 article shall not apply to the state department of  
17 agriculture and any other state departments or agen-  
18 cies hereafter so designated for the purposes set forth  
19 in this section.

**§5A-3-48. Travel rules and regulations; exceptions.**

1 The secretary of administration shall promulgate  
 2 rules and regulations relating to the ownership,  
 3 purchase, use, storage, maintenance, and repair of all  
 4 motor vehicles and aircraft owned by the state of West  
 5 Virginia and in the possession of any department,  
 6 institution, or agency thereof: *Provided*, That the  
 7 provisions of sections forty-eight through fifty-three of  
 8 this article shall not apply to the division of highways  
 9 of the department of transportation or to the division  
 10 of public safety of the department of public safety. If,  
 11 in the judgment of the secretary, economy or conve-  
 12 nience indicate the expediency thereof, the secretary  
 13 may require all vehicles and the aircraft subject to  
 14 regulation by this article, or such of them as he may  
 15 designate, to be kept in such garages, and other places  
 16 of storage, and to be made available in such manner  
 17 and under such terms for the official use of such  
 18 departments, institutions, agencies, officers, agents and  
 19 employees of the state as the secretary may designate  
 20 by any such rule or regulation as he may from time  
 21 to time promulgate. The secretary shall also have the  
 22 authority to administer the travel regulations promul-  
 23 gated by the governor in accordance with section  
 24 eleven, article three, chapter twelve of this code,  
 25 unless otherwise determined by the governor.

**§5A-3-49. Central motor pool for state-owned vehicles and aircraft.**

1 The secretary may create a central motor pool,  
 2 which pool shall be maintained by the purchasing  
 3 division of the department of administration, subject  
 4 to such rules and regulations as the secretary may  
 5 from time to time promulgate. Said division shall be  
 6 responsible for the storage, maintenance, and repairs  
 7 of all vehicles and aircraft assigned to it.

**§5A-3-50. Acquiring and disposing of vehicles and aircraft.**

1 The secretary shall be empowered to purchase new  
 2 vehicles and aircraft and dispose of old vehicles and  
 3 aircraft as is practical from time to time.

**§5A-3-51. Maintenance and service to vehicles and aircraft.**

1 The secretary may utilize any building or land  
2 owned by the state, any department, institution or  
3 agency thereof, for the storing, garaging, and repairing  
4 of such motor vehicles and aircraft. The secretary  
5 shall provide for the employment of personnel needed  
6 to manage said motor pool and to repair and service  
7 such vehicles and aircraft and for the purchase of  
8 gasoline, oil, and other supplies for use in connection  
9 therewith, and may utilize the facilities, services and  
10 employees of any department, institution or agency of  
11 the state to effectuate the purposes thereof.

**§5A-3-52. Special fund for travel management created.**

1 There is hereby created a special fund in the state  
2 treasury, out of which all costs and expenses incurred  
3 pursuant to this section shall be paid. All allocations of  
4 costs and charges for operating, repairing and servic-  
5 ing motor vehicles and aircraft made against any  
6 institution, agency or department shall be paid into  
7 such special fund by said department or agency. All  
8 funds so paid or transferred into this special fund are  
9 hereby appropriated for the purposes of this section  
10 and shall be paid out as the secretary may designate;  
11 said funds to be transferred to include all appropria-  
12 tions for the acquisition, maintenance, repair and  
13 operation of motor vehicles and aircraft and for  
14 personnel.

**§5A-3-53. Enforcement of travel management regulations.**

1 If any state officer, agent or employee fails to  
2 comply with any rule or regulation of the secretary  
3 made pursuant to section forty-eight of this article, the  
4 state auditor shall, upon order of the secretary, refuse  
5 to issue any warrant or warrants on account of  
6 expenses incurred, or to be incurred, in the purchase,  
7 operation, maintenance, or repairs of any motor  
8 vehicle or aircraft now or to be in the possession or  
9 under the control of such officer, agent or employee.  
10 The secretary may take possession of any state-owned  
11 vehicle or aircraft and transfer it to the central motor  
12 pool or to make such other disposition thereof as the

13 secretary may direct.

**§5A-3-54. Payment of legitimate uncontested invoices;  
interest on late payments.**

1 (a) Any properly registered and qualified vendor  
2 who supplies services or commodities to any state  
3 agency shall be entitled to prompt payment upon  
4 presentation to that agency of a legitimate uncontested  
5 invoice.

6 (b) (1) Except as provided in subdivision (2) of this  
7 subsection, for purchases of services or commodities  
8 made on or after the first day of July, one thousand  
9 nine hundred ninety-one, a state check shall be issued  
10 in payment thereof within sixty days after a legitimate  
11 uncontested invoice is received by the state agency  
12 receiving the services or commodities. Any state check  
13 issued after such sixty days shall include interest at  
14 the current rate, as determined by the state tax  
15 commissioner under the provisions of section  
16 seventeen-a, article ten, chapter eleven of this code,  
17 which interest shall be calculated from the sixty-first  
18 day after such invoice was received by the state  
19 agency until the date on which the state check is  
20 mailed to the vendor.

21 (2) For purchases of services or commodities made  
22 on or after the first day of July, one thousand nine  
23 hundred ninety-two, by the division of highways, the  
24 public employees insurance agency, and by the depart-  
25 ment of health and human resources, a state check  
26 shall be issued in payment thereof within sixty days  
27 after a legitimate uncontested invoice is received by  
28 any of such agencies receiving the services or com-  
29 modities. Any state check issued after sixty days shall  
30 include interest at the current rate, determined in the  
31 manner provided in subdivision (1) of this subsection,  
32 which interest shall be calculated from the sixtieth  
33 day after such invoice was received by any of such  
34 agencies until the date on which the state check is  
35 mailed to the vendor.

36 (3) For purposes of this subsection, an invoice shall  
37 be deemed to be received by a state agency on the date

38 on which the invoice is marked as received by the  
39 agency, or three days after the date of the postmark  
40 made by the United States postal service as evidenced  
41 on the envelope in which the invoice is mailed,  
42 whichever is earlier: *Provided*, That in the event an  
43 invoice is received by a state agency prior to the date  
44 on which the commodities or services covered by the  
45 invoice are delivered and accepted or fully performed  
46 and accepted, the invoice shall be deemed to be  
47 received on the date on which the commodities or  
48 services covered by the invoice were actually deli-  
49 vered and accepted or fully performed and accepted.

50 (c) The state auditor shall deduct the amount of any  
51 interest due for late payment of an invoice from any  
52 appropriate account of the state agency responsible for  
53 the late payment: *Provided*, That if two or more state  
54 agencies are responsible for the late payment the state  
55 auditor shall deduct the amount of interest due on a  
56 pro-rata basis.

57 (d) The state agency initially receiving a legitimate  
58 uncontested invoice shall process such invoice for  
59 payment within ten days from its receipt: *Provided*,  
60 That in the case of the department of health and  
61 human resources, the division of highways and the  
62 public employees insurance agency, such invoices shall  
63 be processed within fifteen days of their receipt. No  
64 state agency shall be liable for payment of interest  
65 owed by another state agency under this section.

66 (e) Any other state agency charged by law with  
67 processing a state agency's requisition for payment of  
68 a legitimate uncontested invoice shall either process  
69 the claim or reject it for good cause within ten days  
70 after such state agency receives it. Failure to comply  
71 with the requirements of this subsection shall render  
72 such state agency liable for payment of the interest  
73 mandated by this section when there is a failure to  
74 promptly pay a legitimate uncontested invoice: *Pro-*  
75 *vided*, That no such state agency shall be liable for  
76 payment of interest owed by another state agency  
77 under this section.

78 (f) For purposes of this section, the phrase “state  
79 agency” means any agency, department, board, office,  
80 bureau, commission, authority or any other entity of  
81 state government.

82 (g) This section may be cited as the “Prompt Pay Act  
83 of 1990”.

**ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY AND  
COMMITTEE FOR THE PURCHASE OF COMMODI-  
TIES AND SERVICES FROM THE HANDICAPPED.**

**§5A-3A-1. Purpose.**

1 The purpose of this article is to further the state’s  
2 policy of encouraging disabled persons to achieve  
3 maximum personal independence by engaging in  
4 productive activities and in addition to provide state  
5 agencies, institutions and political subdivisions with a  
6 method for achieving conformity with purchasing  
7 procedures and requirements of nondiscrimination,  
8 affirmative action, in employment matters related to  
9 disabled persons.

**§5A-3A-2. Central nonprofit agency.**

1 A central nonprofit agency approved by the director  
2 of the division of rehabilitation services is established  
3 for the purpose of coordinating purchases under the  
4 provisions of section ten, article three of this chapter,  
5 between various “spending units” of the state and  
6 “nonprofit workshops”. This agency shall have the  
7 following responsibilities:

8 (a) Represent qualified nonprofit workshops in  
9 dealing with state purchasing agents and the other  
10 bodies charged with purchasing responsibilities;

11 (b) Evaluating the qualifications and capabilities of  
12 workshops and entering, as necessary, into contracts  
13 with government procuring entities for the furnishing  
14 of the commodities or services provided by the  
15 workshops;

16 (c) Overseeing workshops to ensure compliance with  
17 contract performance and quality standards; list the  
18 commodities and services of participating workshops,



19 research and assist the workshops in developing new  
20 products and upgrading existing ones, and shall survey  
21 applicable private industry to provide input on fair  
22 market prices; and

23 (d) Present an annual report for each fiscal year  
24 concerning the operations of its nonprofit workshops  
25 to the director of the division of rehabilitation services.

**§5A-3A-3. Committee for the purchase of commodities and  
services from the handicapped.**

1 (a) The committee for the purchase of commodities  
2 and services from the handicapped is hereby created  
3 as a part of the department of administration and shall  
4 be composed of the following six members who are to  
5 be appointed by the governor with the advice and  
6 consent of the senate: A private citizen who is conver-  
7 sant with the problems incidental to the employment  
8 of handicapped persons; a representative of a produc-  
9 ing nonprofit workshop; a representative of the divi-  
10 sion of rehabilitation services; a representative of the  
11 department of administration who is knowledgeable in  
12 the purchasing requirements of the state; a represen-  
13 tative of private business who is knowledgeable in the  
14 activities involved in the sale of commodities or  
15 services to governmental entities; and a representative  
16 of organized labor who is knowledgeable in matters  
17 relating to employment of the disabled. The governor  
18 shall appoint one member to serve as chairperson.

19 (b) Members of the committee are appointed to  
20 serve two-year terms expiring on the thirty-first day  
21 of January of odd-numbered years. Members who are  
22 not state employees shall receive compensation for  
23 their service of fifty dollars per day for each day  
24 actually engaged in the work of the committee and all  
25 members shall receive reimbursement by the state for  
26 expenses incurred in performing their duties as  
27 members.

28 (c) The committee shall have as an executive secre-  
29 tary the person charged with program management in  
30 section ten, article three of this chapter. The executive  
31 secretary shall be responsible for the day-to-day

32 management of the committee and shall coordinate  
33 with the central nonprofit agency to perform the  
34 duties outlined in section ten, article three of this  
35 chapter.

**§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.**

1 The committee shall have the following duties and  
2 responsibilities:

3 (a) Determining the fair market price of all com-  
4 modities, printing and services produced by nonprofit  
5 workshops and offered for sale by the central non-  
6 profit agency to the various departments and political  
7 subdivisions of the state. Prices shall be revised  
8 periodically to reflect changing market conditions.

9 (b) Monitoring the activities of the central nonprofit  
10 agency to assure that the interests of the state's  
11 handicapped citizens are advanced by the agency. The  
12 committee shall make rules necessary to monitor the  
13 agency as well as matters related to the state's use of  
14 the products and services produced by the handi-  
15 capped. Except as stated in section ten, article three of  
16 this chapter, rules shall reflect agreement with the  
17 policies and procedures established by the state's  
18 purchasing units.

19 (c) Monitoring the performance of the central  
20 nonprofit agency to see that the commodities and  
21 services produced meet state specifications (or in the  
22 absence of specifications meet standards in use by the  
23 federal government or industry) as to quality and  
24 delivery. The committee shall provide procedures for  
25 formal and informal resolution of provider and consu-  
26 mer grievances or complaints.

27 (d) Maintaining records pertaining to its activities  
28 under the act including records of sales, formal  
29 grievances, number of handicapped workers  
30 employed, a summary of disabilities for workers  
31 providing services, a list of workshop products and  
32 services, and the geographic distribution of provider

33 workshops. On or before the first day of January of  
34 each year the committee shall file with the governor  
35 and the presiding officer of each house of the Legisla-  
36 ture a written report summarizing the above records  
37 and giving a detailed accounting for all funds received  
38 and disbursed by the committee during the preceding  
39 year.

**§5A-3A-5. Rules.**

1 The committee may adopt rules for the implemen-  
2 tation, extension, administration, or improvement of  
3 the program authorized by this article.

**§5A-3A-6. Exceptions.**

1 Exceptions from the operation of the mandatory  
2 provisions of section ten, article three of this chapter  
3 may be made in any case where the commodity or  
4 printing so produced or provided does not meet the  
5 reasonable requirements of the purchasing unit,  
6 cannot be reasonably provided by a nonprofit work-  
7 shop in the opinion of the committee or the central  
8 nonprofit agency, or is not of a fair market price and  
9 of like quality to other commodities or printing  
10 otherwise available as determined by the director of  
11 purchasing with the advice of the committee for the  
12 purchase of commodities and services from the hand-  
13 icapped. No spending unit may evade the intent of this  
14 section when required goods or services are reasona-  
15 bly available from nonprofit workshops.

**ARTICLE 4. GENERAL SERVICES DIVISION.**

**§5A-4-1. General services division; director.**

1 There is hereby created a new general services  
2 division of the department of administration for the  
3 purpose of having the care, custody and control of the  
4 capitol buildings. The division shall be under the  
5 supervision of a director.

**§5A-4-2. Care, control and custody of capitol buildings and grounds.**

1 The director shall be charged with the full respon-  
2 sibility for the care, control and custody of the capitol

3 buildings and in this connection he shall:

4 (1) Furnish janitorial services, such services to be  
 5 provided by employees of the department of adminis-  
 6 tration for the main capitol building, including east  
 7 and west wings, together with all the departments  
 8 therein, or connected therewith, regardless of the  
 9 budget or budgets, departmental or otherwise, from  
 10 which such janitorial services are paid, and shall  
 11 furnish janitorial supplies, light, heat and ventilation  
 12 for all the rooms and corridors of the buildings:  
 13 *Provided*, That nothing herein shall be construed to  
 14 prohibit contracts for janitorial services with sheltered  
 15 workshops. The president of the senate and speaker of  
 16 the house of delegates, or their respective designees,  
 17 shall have charge of the halls and committee rooms of  
 18 their respective houses and any other quarters at the  
 19 state capitol provided for the use of the Legislature or  
 20 its staff, and keep the same properly cleaned, warmed  
 21 and in good order, and shall do and perform such  
 22 other duties in relation thereto as either house may  
 23 require;

24 (2) Landscape and take care of the lawns and  
 25 gardens;

26 (3) Direct the making of all minor repairs to and  
 27 alterations of the capitol buildings and governor's  
 28 mansion and the grounds of such buildings and  
 29 mansion. Major repairs and alterations shall be made  
 30 under the supervision of the director, subject to the  
 31 direction of the secretary.

32 The offices of the assistants and employees  
 33 appointed to perform these duties shall be located  
 34 where designated by the secretary, except that they  
 35 shall not be located in any of the legislative chambers,  
 36 offices, rooms or halls. Office hours shall be so  
 37 arranged that emergency or telephone service shall be  
 38 available at all times. The hours shall be so arranged  
 39 that janitorial service shall not interfere with other  
 40 employment during regular office hours.

**§5A-4-3. Security officers; appointment; oath; carrying  
 weapons; powers and duties generally, etc.**

1 In addition to the other powers given and assigned

2 to the secretary in this chapter, he is hereby autho-  
3 rized to appoint bona fide residents of this state to act  
4 as security officers upon any premises owned or leased  
5 by the state of West Virginia and under the jurisdic-  
6 tion of the secretary, subject to the conditions and  
7 restrictions hereinafter imposed. Before entering upon  
8 the performance of his duties as such security officer,  
9 each person so appointed shall qualify therefor in the  
10 same manner as is required of county officers by  
11 taking and filing an oath of office as required by  
12 article one, chapter six of this code. No such person  
13 shall have authority to carry a gun or any other  
14 dangerous weapon until he shall have obtained a  
15 license therefor in the manner prescribed by section  
16 two, article seven, chapter sixty-one of this code.

17 It shall be the duty of any person so appointed and  
18 qualified to preserve law and order on any premises  
19 under the jurisdiction of the secretary to which he  
20 may be assigned by the secretary. For this purpose he  
21 shall as to offenses committed on such premises have  
22 and may exercise all the powers and authority and  
23 shall be subject to all the responsibilities of a deputy  
24 sheriff of the county. The assignment of security  
25 officers to any premises under the jurisdiction of the  
26 secretary shall not be deemed to supersede in any way  
27 the authority or duty of other peace officers to  
28 preserve law and order on such premises.

29 The secretary may at his pleasure revoke the  
30 authority of any such officer by filing a notice to that  
31 effect in the office of the clerk of each county in which  
32 his oath of office was filed, and in the case of officers  
33 licensed to carry a gun or other dangerous weapon, by  
34 notifying the clerk of the circuit court of the county in  
35 which the license therefor was granted.

**§5A-4-4. Unlawful to kill or molest animals, birds or fowls  
upon grounds of capitol; powers and duties of  
security officers; penalties.**

1 In addition to the duties of persons appointed and  
2 qualified as security officers pursuant to section three,  
3 article four, chapter five-a of this code, to preserve law

4 and order on any premises under the jurisdiction of  
5 the secretary to which he may be assigned by the  
6 secretary, such security officers shall have authority  
7 and it shall be the duty of such security officers to  
8 enforce the provisions of this section. This authority  
9 and duty of security officers shall not be deemed to  
10 supersede in any way the authority or duty of other  
11 peace officers to enforce the provisions of this section.

12 It shall be unlawful at any time to kill or molest in  
13 any manner, any animals, birds or fowls on the  
14 grounds of the capitol buildings or governor's mansion,  
15 except as may be deemed necessary by the secretary  
16 for the control or extermination of animals, birds or  
17 fowls deemed by him to be pests or a danger to the  
18 health and safety. Any person who kills or molests in  
19 any manner, or knowingly allows a dog or other  
20 animal owned by him to kill or molest in any manner  
21 any animals, birds or fowls on the grounds of the  
22 capitol buildings or governor's mansion shall be guilty  
23 of a misdemeanor, and, upon conviction thereof, be  
24 fined not less than fifty dollars nor more than five  
25 hundred dollars or, in the discretion of the court, be  
26 imprisoned in the county jail for not more than six  
27 months, or both such fine and imprisonment.

28 It shall be unlawful for any person to knowingly  
29 allow a dog owned by him to be upon the grounds of  
30 the capitol buildings or governor's mansion unless  
31 such dog is under control by leash. Any person who  
32 knowingly allows a dog owned by him to be upon the  
33 grounds of the capitol buildings or governor's mansion  
34 while not under control by leash shall be guilty of a  
35 misdemeanor, and, upon conviction thereof, be fined  
36 not less than twenty-five nor more than one hundred  
37 dollars.

38 It shall further be unlawful for any person to  
39 knowingly allow a dog or other animal owned by him  
40 or under his control to defecate upon the grounds of  
41 the capitol buildings or governor's mansion. In the  
42 event that a dog or other animal owned by or under  
43 the control of a person defecates upon the grounds of  
44 the capitol buildings or governor's mansion, the person

45 shall remove such defecation. Any person who know-  
46 ingly allows a dog or other animal owned by him or  
47 under his control to defecate upon the grounds of the  
48 capitol buildings or governor's mansion and who  
49 subsequently fails to remove said defecation, shall be  
50 guilty of a misdemeanor, and, upon conviction thereof,  
51 shall be fined not less than twenty-five nor more than  
52 one hundred dollars.

**§5A-4-5. Regulation of parking on state-owned property in  
Charleston; penalties; jurisdiction.**

1 The secretary is vested with authority to regulate  
2 parking of motor vehicles in accordance with the  
3 provisions of this section with regard to the following  
4 state-owned property in the city of Charleston, Kana-  
5 wha county:

6 (a) The east side of Greenbrier Street between  
7 Kanawha Boulevard and Washington Street, East;

8 (b) The west side of California Avenue between  
9 Kanawha Boulevard and Washington Street, East;

10 (c) Upon the state-owned grounds upon which state  
11 Office Building No. 3 is located;

12 (d) Upon the state-owned grounds upon which state  
13 Office Building No. 4, 112 California Avenue, is  
14 located;

15 (e) In the state-owned parking garage at 212 Califor-  
16 nia Avenue and upon the state-owned grounds upon  
17 which such parking garage is located;

18 (f) Upon the state-owned property at Michigan  
19 Avenue and Virginia Terrace; and

20 (g) Upon any other property now or hereafter  
21 owned by the state and used for parking purposes in  
22 conjunction with the state capitol or state office  
23 buildings numbers three and four, including the  
24 Laidley field complex.

25 The secretary is authorized to promulgate rules and  
26 regulations respecting parking and to allocate parking  
27 spaces to public officers and employees of the state

28 upon all of the aforementioned property of the state:  
 29 *Provided*, That during sessions of the Legislature,  
 30 including regular, extended, extraordinary, and  
 31 interim sessions, parking on the east side of Greenb-  
 32 rier Street between Kanawha Boulevard and Washing-  
 33 ton Street, East, in the science and culture center  
 34 parking lot, on the north side of Kanawha Boulevard  
 35 between Greenbrier Street and California Avenue,  
 36 and on the west side of California Avenue between  
 37 Kanawha Boulevard and Washington Street, East,  
 38 shall be subject to rules and regulations promulgated  
 39 jointly by the speaker of the house of delegates and  
 40 the president of the senate. Any person parking any  
 41 vehicle contrary to the rules and regulations promul-  
 42 gated under authority of this section shall be subject  
 43 to a fine of not less than one dollar nor more than  
 44 twenty-five dollars for each offense. In addition, the  
 45 secretary or the Legislature, as the case may be, may  
 46 cause the removal at owner expense of any vehicle  
 47 that is parked in violation of such rules and regula-  
 48 tions. Magistrates in Kanawha county shall have  
 49 jurisdiction of all such offenses.

50 The secretary is authorized to employ such persons  
 51 as may be necessary to enforce the parking rules and  
 52 regulations promulgated under the provisions of this  
 53 section.

54 On or before the first day of December, one thou-  
 55 sand nine hundred ninety, the secretary shall perform  
 56 a study of the parking requirements at the capitol  
 57 complex, which study shall include the need, esti-  
 58 mated cost and availability of a suitable location, for a  
 59 parking building at the capitol complex.

#### **ARTICLE 5. GOVERNOR'S MANSION ADVISORY COMMITTEE.**

##### **§5A-5-1. Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report.**

1 There is hereby continued the governor's mansion  
 2 advisory committee within the department of admin-  
 3 istration. The secretary of administration or his  
 4 designated representative, the commissioner of culture



5 and history or his designated representative, and the  
6 spouse of any governor during the term of office of  
7 that governor, or the designated representative of such  
8 governor, shall be ex officio members of the commit-  
9 tee. In addition, the governor shall appoint three  
10 additional members of the committee, one to be a  
11 curator in the field of fine arts, one to be an interior  
12 decorator who is a member of the American institute  
13 of decorators, and one to be a building contractor. The  
14 appointive members of the committee shall serve for  
15 a term of four years. The members of the committee  
16 shall serve without compensation but shall be reim-  
17 bursed for reasonable and necessary expenses actually  
18 incurred in the performance of their duties; except  
19 that in the event the expenses are paid, or are to be  
20 paid, by a third party, the member shall not be  
21 reimbursed by the state. The governor shall designate  
22 from the committee a chairman to serve for a term of  
23 one year. The secretary of administration shall serve  
24 as secretary. The committee shall meet upon the call  
25 of the chairman annually and may meet at such other  
26 times as may be necessary for the performance of its  
27 functions.

28 The committee shall be charged with the following  
29 responsibilities:

30 (1) To make recommendations to the governor for  
31 the maintaining, preserving and replenishing of all  
32 articles of furniture, fixtures, decorative objects,  
33 linens, silver, china, crystal and objects of art used or  
34 displayed in the state rooms of the governor's man-  
35 sion, which state rooms shall consist of the front hall,  
36 the reception room, the ballroom and its sitting room,  
37 the state dining room, the front upstairs hall and the  
38 music room;

39 (2) To make recommendations to the governor as to  
40 the decor and arrangements best suited to enhance the  
41 historic and artistic values of the mansion in keeping  
42 with the architecture thereof and of such articles of  
43 furniture, fixtures, decorative objects, linens, silver,  
44 china, crystal and objects of art, which recommenda-  
45 tions shall be considered by the governor in decorating

46 said mansion; and

47 (3) To invite interested persons to attend its meet-  
48 ings or otherwise to assist in carrying out its functions.

49 All departments, boards, agencies, commissions,  
50 officials and employees of the state are hereby autho-  
51 rized to cooperate with and assist the committee in the  
52 performance of its functions and duties whenever  
53 possible. As soon after the close of each fiscal year as  
54 possible, the committee shall make an annual report to  
55 the governor and the Legislature with respect to its  
56 activities and responsibilities.

**§5A-5-2. Office of governor's mansion director created;  
duties and responsibilities.**

1 There is hereby created the office of governor's  
2 mansion director, who shall be qualified by back-  
3 ground and experience for such a position and shall be  
4 appointed by the governor to serve at the will and  
5 pleasure of the governor. The mansion director shall  
6 be charged with the following duties and responsibil-  
7 ities: To protect and preserve all articles of furniture,  
8 fixtures, table linens, silver, china, crystal and objects  
9 of art displayed in the state rooms in the mansion. The  
10 mansion director shall assist the governor and/or the  
11 governor's spouse in the scheduling of state govern-  
12 ment functions and entertainment at the mansion.

**§5A-5-3. Official use of state rooms in governor's mansion;  
vacating private rooms of mansion.**

1 (a) The state rooms of the mansion shall be used for  
2 official state government functions and entertainment:  
3 *Provided*, That tours of the state rooms of the mansion  
4 shall be permitted, and the mansion director shall  
5 assist in the scheduling of said tours and prescribe  
6 rules and regulations governing same.

7 (b) No personal furniture or furnishings of the first  
8 family may be placed in the state rooms of the  
9 mansion except for home entertainment equipment.

10 (c) No furniture or furnishings in the state rooms  
11 located on the first floor of the mansion may be

12 replaced, removed or sold without prior approval of  
13 the governor's mansion advisory committee.

14 (d) No items in the state rooms purchased by the  
15 West Virginia mansion preservation foundation, inc.,  
16 may be replaced, removed or sold without prior  
17 approval of such corporation.

18 (e) The outgoing governor and his family shall  
19 vacate the private rooms of the mansion at least seven  
20 days prior to the inauguration of a new governor so  
21 that the mansion may be made suitable for the change  
22 in occupancy.

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS  
DIVISION.**

**§5A-7-1. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Data-processing equipment" means: (1) Any  
4 equipment having stored program capabilities; (2) any  
5 equipment designed to handle electronic input-output  
6 devices; or (3) any other similar equipment specified  
7 by the director;

8 (b) "Director" means the director of the information  
9 services and communications division;

10 (c) "Division" means the information services and  
11 communications division established in section two  
12 hereof;

13 (d) "Secretary" means the secretary of the depart-  
14 ment of administration;

15 (e) "Telecommunications equipment" means: (1)  
16 Any equipment used in the transmission, emission or  
17 reception of signals, writings, images, sounds or other  
18 forms of communication by electromagnetic or visual  
19 means; or (2) any other similar equipment specified by  
20 the director.

**§5A-7-2. Division created; purpose; use of facilities; rules  
and regulations.**

1 There is hereby created the information services

2 and communications division of the department of  
 3 administration for the purpose of establishing, devel-  
 4 oping and improving data processing and telecommun-  
 5 ication functions in the various state agencies, for  
 6 promulgating standards in the utilization of data  
 7 processing and telecommunication equipment and for  
 8 promoting the more effective and efficient operation  
 9 of all branches of state government. The facilities of  
 10 the division shall be available, subject to rules and  
 11 regulations established by the secretary, to the legisla-  
 12 tive, executive and judicial branches of state govern-  
 13 ment. Such rules and regulations shall be promulgated  
 14 in accordance with the provisions of article three,  
 15 chapter twenty-nine-a of this code.

**§5A-7-3. Director; appointment and qualifications.**

1 The division shall be under the supervision and  
 2 control of a director. The secretary shall appoint a  
 3 director of the division. The director must have  
 4 extensive knowledge in the principles and practices of  
 5 administration, five years' experience in data process-  
 6 ing and telecommunications operations and extensive  
 7 knowledge of the procedures and techniques used in  
 8 conducting highly complex systems analyses.

**§5A-7-4. Powers and duties of division generally; review of findings by governor; authority of governor to order transfer of equipment and personnel; professional staff.**

1 The division shall be responsible for the planning of  
 2 an informational and analytical system for use by all  
 3 branches of state government. The division shall also  
 4 evaluate the economic justification, system design and  
 5 suitability of equipment and systems used in state  
 6 government. The director shall report to the secretary.

7 The governor shall review such findings and recom-  
 8 mendations and is hereby authorized to order the  
 9 transfer, in whole or in part, to the division from any  
 10 other department or agency of state government,  
 11 except the Legislature, the judiciary and the univer-  
 12 sity of West Virginia board of trustees and board of  
 13 directors for the state college system, of all data

14 processing and telecommunication activities, and the  
15 equipment, supplies, personnel and funds appropriated  
16 therefor utilized for data processing and telecommu-  
17 nication purposes: *Provided*, That any such transfer  
18 shall not be effective until ninety days following the  
19 entry of the transfer order by the governor.

20 The director shall be responsible for the develop-  
21 ment of personnel to carry out the technical work of  
22 the division and is hereby authorized to approve  
23 reimbursement of costs incurred by employees to  
24 obtain education and training.

25 Any procurements or changes in data processing  
26 and/or telecommunication equipment or services by  
27 any spending unit shall be referred to the director and  
28 payment for any such procurement or change will not  
29 be honored unless approved by the director.

30 An accounting system shall be implemented and  
31 maintained by the director for all telephone service to  
32 the state.

**§5A-7-5. Control over central mailing office.**

1 The central mailing office heretofore controlled by  
2 the director of the general services division shall  
3 hereinafter be under the control of the director of the  
4 information services and communications division.

**§5A-7-6. Central mailing office employees.**

1 The director shall employ such persons as shall be  
2 necessary to carry out the provisions of section seven,  
3 eight, nine and ten of this article.

**§5A-7-7. Central mailing office responsibilities.**

1 The director shall have the general charge and  
2 supervision of the central mailing office, and shall be  
3 responsible for its efficient administration. The direc-  
4 tor shall be required to: (1) charge each spending unit  
5 of state government served by the central mailing  
6 office for providing such services; (2) keep proper  
7 account of the receipts and disbursements of the  
8 central mailing office; (3) render to the secretary a  
9 report each month showing the receipts and expenses

10 of the central mailing office for the preceding month,  
 11 and shall render such other reports as the secretary  
 12 may require; (4) keep the central mailing office open  
 13 during regularly stated hours to serve state spending  
 14 units; and (5) provide rules and regulations for the  
 15 efficient and prompt dispatch of the mail.

**§5A-7-8. Use of the central mailing office.**

1 All state spending units having their offices in the  
 2 capitol, except the legislative branch of government,  
 3 shall dispatch all mail through the central mailing  
 4 office: *Provided*, That mail prepared after gathering  
 5 time and mail for special handling may be posted  
 6 without utilizing the central mailing office upon  
 7 approval of the director.

**§5A-7-9. Preparation of mail for special rates.**

1 All mail received by the central mailing office shall  
 2 be processed and presorted in order to receive the  
 3 most favorable mailing rates, unless otherwise  
 4 directed by the director. The director is authorized to  
 5 make such expenditures as are necessary to process  
 6 and presort all outgoing mail or to enter into contracts  
 7 with any person, firm or corporation engaged in such  
 8 business to supply the service.

**§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.**

1 For the operation of the division, there is hereby  
 2 created in the state treasury a special revolving fund  
 3 to be known and designated as the "information  
 4 services and communications fund". This fund shall  
 5 consist of appropriations made by the Legislature,  
 6 funds transferred in accordance with the provisions of  
 7 section four of this article, funds received for data  
 8 processing, telecommunication and central mailing  
 9 office services rendered to other agencies, depart-  
 10 ments, units of state and local government and any  
 11 other entity, and funds received from the federal  
 12 government or any agency or department thereof,  
 13 which federal funds the division is hereby authorized  
 14 to receive. Each agency, department, unit of state or

15 local government or any other entity served by the  
16 information services and communications division, is  
17 hereby authorized and directed to transmit to the  
18 division for deposit in said special fund the charges  
19 made by the agency for data processing, telecommu-  
20 nication and central mailing office services rendered,  
21 such charges to be those fixed in a schedule or  
22 schedules prepared by the director and approved by  
23 the governor. Disbursements from the fund shall be  
24 made in accordance with an approved expenditure  
25 schedule as provided by article two, chapter five-a of  
26 this code and shall be made under the direct supervi-  
27 sion of the secretary.

**§5A-7-11. Confidential records.**

1 Under no circumstances whatever shall the head of  
2 any state department or agency deliver to the division  
3 any records required by law to be kept confidential,  
4 but such head may extract information from such  
5 records for data processing by such division, provided  
6 the integrity of such confidential records is fully  
7 protected.

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION  
ACT.**

**§5A-8-1. Short title.**

1 This article shall be known as the "Records Manage-  
2 ment and Preservation of Essential Records Act".

**§5A-8-2. Declaration of policy.**

1 The Legislature declares that programs for the  
2 efficient and economical management of state and  
3 local records will promote economy and efficiency in  
4 the day-to-day record-keeping activities of state and  
5 local government and will facilitate and expedite  
6 government operations; that records containing infor-  
7 mation essential to the operation of government and to  
8 the protection of the rights and interests of persons  
9 must be protected against the destructive effects of all  
10 forms of disaster and must be available when needed.  
11 It is necessary, therefore, to adopt special provisions  
12 for the selection and preservation of essential state and

13 local records thereby providing for the protection and  
14 availability of such information.

**§5A-8-3. Definitions.**

1 As used in this article:

2 (a) "Disaster" means any occurrence of fire, flood,  
3 storm, earthquake, explosion, epidemic, riot, sabotage  
4 or other condition of extreme peril resulting in  
5 substantial damage or injury to persons or property  
6 within this state, whether such occurrence is caused  
7 by an act of God, nature or man, including an enemy  
8 of the United States.

9 (b) "Record" means document, book, paper, photo-  
10 graph, sound recording or other material, regardless of  
11 physical form or characteristics, made or received  
12 pursuant to law or ordinance or in connection with the  
13 transaction of official business. Library and museum  
14 material made or acquired and preserved solely for  
15 reference or exhibition purposes, extra copies of  
16 documents preserved only for convenience of refer-  
17 ence, and stocks of publications and of processed  
18 documents are not included within the definition of  
19 records as used in this article.

20 (c) "State record" means:

21 (1) A record of a department, office, commission,  
22 board or other agency, however designated, of the  
23 state government.

24 (2) A record of the state Legislature.

25 (3) A record of any court of record, whether of  
26 statewide or local jurisdiction.

27 (4) Any record designated or treated as a state  
28 record under state law.

29 (d) "Local record" means a record of a county, city,  
30 town, authority or any public corporation or political  
31 entity whether organized and existing under charter  
32 or under general law unless the record is designated  
33 or treated as a state record under state law.

34 (e) "Agency" means any department, office, com-



35 mission, board or other unit, however designated, of  
36 the executive branch of state government.

37 (f) "Preservation duplicate" means a copy of an  
38 essential state record which is used for the purpose of  
39 preserving such state record pursuant to this article.

**§5A-8-4. Categories of records to be preserved.**

1 State or local records which are within the following  
2 categories are essential records which shall be pre-  
3 served pursuant to this article:

4 Category A. Records containing information neces-  
5 sary to the operation of government in the emergency  
6 created by a disaster.

7 Category B. Records not within category A but  
8 containing information necessary to protect the rights  
9 and interest of persons or to establish and affirm the  
10 powers and duties of governments in the resumption  
11 of operations after a disaster.

**§5A-8-5. State records administrator.**

1 The secretary of the department of administration is  
2 hereby designated the state records administrator,  
3 hereinafter called the administrator. The administra-  
4 tor shall establish and administer in the department of  
5 administration of the executive branch of state gov-  
6 ernment a records management program, which will  
7 apply efficient and economical management methods  
8 to the creation, utilization, maintenance and retention,  
9 preservation and disposal of state records; and shall  
10 establish and maintain a program for the selection and  
11 preservation of essential state records and shall advise  
12 and assist in the establishment of programs for the  
13 selection and preservation of essential local records.

**§5A-8-6. Records management and preservation advisory committee.**

1 A records management and preservation advisory  
2 committee is continued within the department of  
3 administration, to advise the administrator and to  
4 perform such other duties as this article requires. The  
5 records management and preservation advisory com-

6 mittee shall be composed of the following members:  
 7 the governor, auditor, attorney general, president of  
 8 the Senate, speaker of the House of Delegates, the  
 9 chief justice of the supreme court of appeals, a judge  
 10 of a circuit court to be appointed by the governor, the  
 11 director of the office of emergency services, and the  
 12 director of the section of archives and history of the  
 13 division of culture and history, or their respective  
 14 designated representatives. The advisory committee  
 15 shall designate one of its members to be chairman, and  
 16 it shall adopt rules for the conduct of its business. The  
 17 advisory committee shall meet whenever called by its  
 18 chairman or the administrator. The members of the  
 19 advisory committee shall serve without compensation  
 20 but shall be reimbursed for all reasonable and neces-  
 21 sary expenses actually incurred in the performance of  
 22 their duties as members of the advisory committee;  
 23 except that in the event the expenses are paid, or are  
 24 to be paid, by a third party, the member shall not be  
 25 reimbursed by the state.

**§5A-8-7. Duties of administrator.**

- 1 The administrator shall, with due regard for the  
 2 functions of the agencies concerned:
- 3 (a) Establish standards, procedures, and techniques  
 4 for effective management of records.
- 5 (b) Make continuing surveys of paper work opera-  
 6 tions and recommend improvements in current  
 7 records management practices including the use of  
 8 space, equipment and supplies employed in creating,  
 9 maintaining, storing and servicing records.
- 10 (c) Establish standards for the preparation of sche-  
 11 dules providing for the retention of state records of  
 12 continuing value and for the prompt and orderly  
 13 disposal of state records no longer possessing sufficient  
 14 administrative, legal, or fiscal value to warrant their  
 15 further keeping.
- 16 (d) Select the state records which are essential and  
 17 determine their category pursuant to this article. In  
 18 accordance with the rules and regulations promul-

19 gated by the administrator, each person who has  
20 custody or control of state records shall (1) inventory  
21 the state records in his custody or control; (2) submit  
22 to the administrator a report thereon containing such  
23 information as the administrator directs and contain-  
24 ing recommendations as to which state records are  
25 essential; and (3) periodically review his inventory and  
26 his report and, if necessary, revise the report so that  
27 it is current, accurate and complete.

28 (e) Obtain reports from agencies as are required for  
29 the administration of the program.

**§5A-8-8. Rules and regulations.**

1 The administrator shall promulgate such rules and  
2 regulations concerning the management and selection  
3 and preservation of essential state records as are  
4 necessary or proper to effectuate the purpose of this  
5 article.

**§5A-8-9. Duties of agency heads.**

1 The head of each agency shall:

2 (a) Establish and maintain an active, continuing  
3 program for the economical and efficient management  
4 of the records of the agency.

5 (b) Make and maintain records containing adequate  
6 and proper documentation of the organization, func-  
7 tions, policies, decisions, procedures and essential  
8 transactions of the agency designed to furnish infor-  
9 mation to protect the legal and financial rights of the  
10 state and of persons directly affected by the agency's  
11 activities.

12 (c) Submit to the administrator, in accordance with  
13 the standards established by him, schedules proposing  
14 the length of time each state record series warrants  
15 retention for administrative, legal or fiscal purposes  
16 after it has been received by the agency. The head of  
17 each agency also shall submit lists of state records in  
18 custody that are not needed in the transaction of  
19 current business and that do not have sufficient  
20 administrative, legal or fiscal value to warrant their

21 further keeping for disposal in conformity with the  
22 requirements of section ten of this article.

23 (d) Cooperate with the administrator in the conduct  
24 of surveys made pursuant to the provisions of this  
25 article.

26 (e) Comply with the rules, regulations, standards  
27 and procedures issued by the administrator.

28 (f) First obtain the administrator's written approval  
29 before purchasing or acquiring any equipment or  
30 supplies used or to be used to store or preserve records  
31 of the agency. If such approval is obtained the agency  
32 will submit a requisition to the finance division  
33 together with a copy of the administrator's said  
34 approval.

**§5A-8-10. Essential state records — Preservation duplicates.**

1 (a) The administrator may make or cause to be  
2 made preservation duplicates or may designate as  
3 preservation duplicates existing copies of essential  
4 state records. A preservation duplicate shall be dura-  
5 ble, accurate, complete and clear, and a preservation  
6 duplicate made by means of photography, microphoto-  
7 graphy, photocopying, film or microfilm shall be made  
8 in conformity with the standards prescribed therefor  
9 by the administrator.

10 (b) A preservation duplicate made by a photo-  
11 graphic, photostatic, microfilm, microcard, miniature  
12 photographic, or other process which accurately  
13 reproduces or forms a durable medium for so repro-  
14 ducing the original, shall have the same force and  
15 effect for all purposes as the original record whether  
16 the original record is in existence or not. A transcript,  
17 exemplification or certified copy of such preservation  
18 duplicate shall be deemed for all purposes to be a  
19 transcript, exemplification or certified copy of the  
20 original record.

**§5A-8-11. Essential state records — Safekeeping.**

1 (a) The administrator shall prescribe the place and  
2 manner of safekeeping of essential state records and

3 preservation duplicates and may establish, with the  
4 approval of the Legislature, storage facilities therefor.  
5 The administrator may provide for storage outside the  
6 state.

7 (b) When in the opinion of the administrator the  
8 legally designated or customary location of an essential  
9 state record is such that the essential state record may  
10 be destroyed or unavailable in the event of a disaster  
11 caused by an enemy of the United States:

12 (1) The administrator shall store a preservation  
13 duplicate at another location and permit such state  
14 record to remain at its legally designated or customary  
15 location; or

16 (2) The administrator shall store such state record at  
17 a location other than its legally designated or custom-  
18 ary location and deposit at the legally designated or  
19 customary location a preservation duplicate for use in  
20 lieu of the state record; or

21 (3) The administrator may store such state record at  
22 a location other than its legally designated or custom-  
23 ary location, without providing for a preservation  
24 duplicate, upon a determination that it is impractica-  
25 ble to provide for a preservation duplicate and that the  
26 state record is not frequently used. Such determina-  
27 tion shall be made by the administrator and the  
28 regularly designated custodian of such state record,  
29 but if they disagree the determination shall be made  
30 by the administrator.

31 (c) The requirements of subsection (b) of this section  
32 shall not prohibit the administrator from removing an  
33 essential state record or preservation duplicate from  
34 the legally designated or customary location of the  
35 state record if a disaster caused by an enemy of the  
36 United States has occurred or is imminent.

**§5A-8-12. Essential state records — Maintenance, inspection  
and use.**

1 (a) The administrator shall properly maintain essen-  
2 tial state records and preservation duplicates stored by  
3 him.

4 (b) An essential state record or preservation dupli-  
5 cate stored by the administrator may be recalled by  
6 the regularly designated custodian of the state record  
7 for temporary use when necessary for the proper  
8 conduct of the office and shall be returned by such  
9 custodian to the administrator immediately after such  
10 use.

11 (c) When an essential state record is stored by the  
12 administrator, the administrator, upon request of the  
13 regularly designated custodian of the state record,  
14 shall provide for its inspection, or for the making or  
15 certification of copies thereof, and such copies when  
16 certified by the administrator shall have the same  
17 force and effect as if certified by the regularly desig-  
18 nated custodian.

**§5A-8-13. Essential state records — Confidential records.**

1 When a state record is required by law to be treated  
2 in a confidential manner and is an essential state  
3 record, the administrator in effectuating the purpose  
4 of this article with respect to such state record, shall  
5 protect its confidential nature.

**§5A-8-14. Essential state records — Review of program.**

1 The administrator shall review periodically but at  
2 least once a year the program for the selection and  
3 preservation of essential state records, including the  
4 classification of records and the provisions for preser-  
5 vation duplicates, and for safekeeping of essential state  
6 records or preservation duplicates to ensure that the  
7 purposes of this article are accomplished.

**§5A-8-15. Records management and preservation of local records.**

1 The governing body of each county, city, town,  
2 authority or any public corporation or political entity,  
3 whether organized and existing under a charter or  
4 under general law, shall promote the principles of  
5 efficient records management and preservation of  
6 local records. Such governing body may, as far as  
7 practical, follow the program established for the  
8 management and preservation of state records. The

9 administrator shall, upon the request of a local govern-  
10 ing body, provide advice and assistance in the estab-  
11 lishment of a local records management and preserva-  
12 tion program.

**§5A-8-16. Assistance to legislative and judicial branches.**

1 Upon request, the records administrator shall assist  
2 and advise in the establishment of records manage-  
3 ment programs in the legislative and judicial branches  
4 of state government and shall, as required by them,  
5 provide program services similar to those available to  
6 the executive branch of state government pursuant to  
7 the provisions of this article.

**§5A-8-17. Disposal of records.**

1 No record shall be destroyed or otherwise disposed  
2 of by any agency of the state, unless it is determined  
3 by the administrator and the director of the section of  
4 archives and history of the division of culture and  
5 history that the record has no further administrative,  
6 legal, fiscal, research or historical value.

**§5A-8-18. Destruction of nonrecord materials.**

1 Nonrecord materials or materials not included  
2 within the definition of records as contained in this  
3 article may, if not otherwise prohibited by law, be  
4 destroyed at any time by the agency in possession of  
5 such materials without the prior approval of the  
6 administrator. The administrator may formulate  
7 procedures and interpretations to guide in the disposal  
8 of nonrecord materials.

**§5A-8-19. Annual report.**

1 The administrator shall make an annual written  
2 report to the governor for transmission to the Legisla-  
3 ture. The report shall describe the status and progress  
4 of programs established pursuant to this article and  
5 shall include the recommendations of the administra-  
6 tor for improvements in the management and preser-  
7 vation of records in state government.

**ARTICLE 9. VOLUNTARY GILDING THE DOME CHECK-OFF PROGRAM.**

**§5A-9-3. Contributions credited to special fund.**

1 The tax division of the department of tax and  
2 revenue shall determine by the first day of July of  
3 each year the total amount designated pursuant to this  
4 legislation and shall report such amount to the state  
5 treasurer who shall credit such amount to a special  
6 department of administration fund.

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

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

**§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations.**

1 Except as provided in this section, it shall be unlaw-  
2 ful for any state board, commission, officer or  
3 employee: (1) To incur any liability during any fiscal  
4 year which cannot be paid out of the then current  
5 appropriation for such year or out of funds received  
6 from an emergency appropriation; or (2) to authorize  
7 or to pay any account or bill incurred during any fiscal  
8 year out of the appropriation for the following year:  
9 *Provided*, That nothing contained herein shall prohibit  
10 entering into a contract or lease for buildings, land and  
11 space, the cost of which exceeds the current year's  
12 appropriation, even though the amount is not available  
13 during the then current year, if the aggregate cost  
14 does not exceed the amount then authorized by the  
15 Legislature. Nothing contained herein shall repeal the  
16 provisions of the general law relating to the expiration  
17 of appropriations for buildings and land.

18 Any member of a state board or commission or any  
19 officer or employee violating any provision of this  
20 section shall be personally liable for any debt unlaw-  
21 fully incurred or for any payment unlawfully made.

**CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.**

**ARTICLE 3. INTEREST ON PUBLIC CONTRACTS.**

**§14-3-1. Payment of interest by the state on contracts when final payment is delayed.**

1 All public contracts let in accordance with article



2 three, chapter five-a of the code or let by the state  
3 board of education, the University of West Virginia  
4 board of trustees, the board of directors of the state  
5 college system, state armory board or by any other  
6 board, agency or commission of the state, entered into  
7 on and after the first day of March, one thousand nine  
8 hundred sixty-nine, and prior to the first day of July,  
9 one thousand nine hundred ninety-one, except the  
10 state road commissioner, shall contain the following  
11 paragraph:

12 “Within ninety days after the completion of this  
13 contract is certified by the approving authority to be  
14 complete in accordance with terms of the plans or  
15 specifications, or both where appropriate, or is  
16 accepted by the authorized spending officer as com-  
17 plete, or is occupied by the owner, or is dedicated for  
18 public use by the owner, whichever occurs first, the  
19 balance due the contractor herein shall be paid in full.  
20 Should such payment be delayed for more than ninety  
21 days beyond the day the completion of this contract is  
22 certified by the authorized spending officer or is  
23 accepted by the owner as complete, or is occupied by  
24 the owner, or is dedicated for public use by the owner,  
25 said contractor shall be paid interest, beginning on the  
26 ninety-first day, at the current rate, as determined by  
27 the state tax commissioner under the provisions of  
28 section seventeen-a, article ten, chapter eleven of this  
29 code per annum on any unpaid balance: *Provided*,  
30 That whenever the approving authority reasonably  
31 determines that delay in completing the contract or in  
32 accepting payment for the contract is the fault of the  
33 contractor herein, the approving authority may accept  
34 and use the commodities or printing or the project  
35 may be occupied by the owner or dedicated for public  
36 use by the owner without payment of any interest on  
37 amounts withheld past the ninety-day limit.”

38 All public construction contracts relating to roads or  
39 bridges let by the commissioner of the division of  
40 highways, entered into on and after the first day of  
41 March, one thousand nine hundred sixty-nine, and  
42 prior to the first day of July, one thousand nine

43 hundred ninety-one, shall contain the following  
44 paragraph:

45 “Within one hundred fifty days after the approving  
46 authority notifies the contractor, in writing, of the  
47 final acceptance by such approving authority of the  
48 project for which this contract provides, the balance  
49 due the prime contractor shall be paid in full. Should  
50 such payment be delayed for more than one hundred  
51 fifty days beyond the date that the approving author-  
52 ity notifies the contractor of the final acceptance of the  
53 project in accordance with the terms of the contract  
54 and the plans and specifications thereof, said prime  
55 contractor shall be paid interest, beginning on the one  
56 hundred fifty-first day, at the current rate, as deter-  
57 mined by the state tax commissioner under the  
58 provisions of section seventeen-a, article ten, chapter  
59 eleven of this code per annum on such unpaid balance:  
60 *Provided*, That if the prime contractor does not agree  
61 to the amount of money determined by the approving  
62 authority to be due and owing to the prime contractor  
63 and set forth on the final estimate document, and the  
64 approving authority makes an offer to pay the amount  
65 of the final estimate to the said prime contractor, then  
66 the prime contractor shall not be entitled to receive  
67 any interest on the amount set forth in said final  
68 estimate, but shall only be entitled to the payment of  
69 interest current rate, as determined by the state tax  
70 commissioner under the provisions of section  
71 seventeen-a, article ten, chapter eleven of this code  
72 per annum on the amount of money finally deter-  
73 mined to be due and owing to the said prime contrac-  
74 tor, less the amount of the final estimate that the  
75 approving authority had originally offered to pay to  
76 the said prime contractor.”

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 6. CIVIL SERVICE SYSTEM.**

#### **§29-6-7. Director of personnel; appointment; qualifications; powers and duties.**

1 (a) The secretary of the department of administra-

2 tion shall appoint the director. The director shall be a  
3 person knowledgeable of the application of the merit  
4 principles in public employment as evidenced by the  
5 obtainment of a degree in business administration,  
6 personnel administration, public administration or the  
7 equivalent and at least five years of administrative  
8 experience in personnel administration.

9 (b) The director shall:

10 (1) Consistent with the provisions of this article  
11 administer the operations of the division, allocating  
12 the functions and activities of the division among  
13 sections as the director may establish;

14 (2) Maintain a personnel management information  
15 system necessary to carry out the provisions of this  
16 article;

17 (3) Supervise payrolls and audit payrolls, reports or  
18 transactions for conformity with the provisions of this  
19 article;

20 (4) Plan, evaluate, administer and implement per-  
21 sonnel programs and policies in state government and  
22 to political subdivisions after agreement by the parties;

23 (5) Supervise the employee selection process and  
24 employ performance evaluation procedures;

25 (6) Develop programs to improve efficiency and  
26 effectiveness of the public service, including, but not  
27 limited to, employee training, development, assistance  
28 and incentives;

29 (7) Establish pilot programs and other projects for a  
30 maximum of one year outside of the provisions of this  
31 article, subject to approval by the board, to be  
32 included in the annual report;

33 (8) Establish and provide for a public employee  
34 interchange program and may provide for a voluntary  
35 employee interchange program between public and  
36 private sector employees;

37 (9) Establish an internship program;

38 (10) Assist the governor and secretary of the depart-

39 ment of administration in general work force planning  
40 and other personnel matters;

41 (11) Make an annual report to the governor and  
42 Legislature and all other special or periodic reports as  
43 may be required;

44 (12) Assess cost for special or other services;

45 (13) Recommend rules to the board for implementa-  
46 tion of this article; and

47 (14) Conduct schools, seminars or classes for super-  
48 visory employees of the state regarding handling of  
49 complaints and disciplinary matters and the operation  
50 of the state personnel system.

**§29-6-23. Special fund; appropriations; cost of administering  
article; acceptance of grants or contribution;  
disbursements.**

1 For the operation of the division, there is hereby  
2 created in the state treasury a special revolving fund  
3 to be known and designated as the "division of  
4 personnel fund". This fund shall consist of appropria-  
5 tions made by the Legislature, funds transferred in  
6 accordance with the provisions of section nine of this  
7 article, funds received for personnel services rendered  
8 to other agencies, departments, divisions and units of  
9 state and local government, and funds received by  
10 grant or contribution from the federal government or  
11 any other entity which funds the division is hereby  
12 authorized to receive: *Provided*, That for fiscal year  
13 one thousand nine hundred ninety all funds remaining  
14 in account numbers 5840-00, 5840-35 and 5840-17 shall  
15 be transferred to the division of personnel fund on the  
16 effective date of this article. Each agency, department,  
17 division or unit of state or local government served by  
18 the division of personnel is hereby authorized and  
19 directed to transmit to the division for deposit in said  
20 special fund the charges made by the division of  
21 personnel for personnel services rendered, such  
22 charges to be those fixed in a schedule or schedules  
23 prepared by the director and approved by the secre-  
24 tary of the department of administration. Disburse-

25 ments from the fund shall be made in accordance with  
26 an approved expenditure schedule as provided by  
27 article two, chapter five-a of this code and shall be  
28 made under the direct supervision of the director.

29 The director shall maintain accurate records reflect-  
30 ing the cost of administering the provisions of this  
31 article.

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

*Frederic L. Penn*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1990.

*James E. Mahan*  
.....  
Clerk of the Senate

*Donald J. Topp*  
.....  
Clerk of the House of Delegates

*Keith Fendley*  
.....  
President of the Senate

*Paul R. Rubin*  
.....  
Speaker House of Delegates

The within is approved this the *28<sup>th</sup>*  
day of *March* ....., 1990.

*W. Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/90

Time 4:10 am

RECEIVED  
MAY 25 1955  
U.S. DEPARTMENT OF AGRICULTURE