WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

---

ENROLLED
Com. Sub. for
HOUSE BILL No. 4030

(By Delegate
Mr. Speaker, Mr. Chambers,
and Delegate Burk)
[By Request of the Executive]

Passed ................... March 12, 1994

In Effect .................. July 1, 1994
AN ACT to amend and reenact sections twelve and fifteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four and five, article one, chapter five-d of said code; to amend and reenact section one, article two, chapter five-f of said code; to further amend said article two by adding thereto two new sections, designated sections five and six; to amend and reenact sections one, two, three, four, four-a, five, seven, nine and twelve, article ten-a, chapter eighteen of said code; to amend article twelve-a, chapter nineteen of said code by adding thereto a new section, designated section one-a, to amend and reenact sections one and four, article eighteen, chapter twenty-nine, all relating to the reorganization of certain governmental agencies; abolishing the division of tourism and parks, transferring functions related to parks and recreation to the division of natural resources, transferring functions related to tourism to the West Virginia development office and authorizing the governor to implement the transfer by executive action; imposing certain restrictions on contracts related to park facilities; changing compensation and expense reimbursement of the public
energy authority and terminating power and duty of the authority to finance additional projects; abolishing the department of commerce, labor and environmental resources and providing for lines of authority for entities formerly within that department; continuing division of rehabilitation services as a division of the department of education and the arts under the secretary of the department of education and the arts; requiring report on West Virginia rehabilitation hospital; transferring the division of banking, the board of banking and financial institutions, and the lending rate board, to the department of tax and revenue; placing the hospital finance authority, the municipal bond commission and the public energy authority under the board of investments for purposes of administrative support and liaison; authorizing the governor to transfer independent boards from agencies whose decisions they may be called upon to review, and providing for specific legislation to be recommended to the Legislature; requiring director of debt management commission and secretary of the department of administration to report on recommended administrative and legislative actions for boards and commissions issuing bonds or incurring debt; abolishing the farm management commission and transferring institutional farms to the department of agriculture; and requiring commissioner of agriculture to report on recommended use or disposition of property transferred; changing the name of the railroad maintenance authority to the West Virginia state rail authority and changing compensation and expense reimbursement of members.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-12. Abolishment of the division of tourism and parks; transfer of functions.

(a) The division of tourism and parks and the office of commissioner of tourism and parks is hereby abolished effective the first day of July, one thousand nine hundred ninety-five. Not later than the first day of January, one thousand nine hundred ninety-five, the sections and functions of the division of tourism and parks related to state parks, state recreation areas and wildlife recreation areas shall be transferred to the division of natural resources and all sections and functions of the division of tourism and parks related to tourism shall be transferred to the West Virginia development office.

(b) The governor shall, by executive order, implement the transfer of sections and functions provided for in subsection (a) of this section. The governor may provide by said executive order for the transfer, in whole or in part, of any section in the division of tourism and parks and the offices, assets, liabilities, contracts, property, records, personnel, and functions of any section in the division of tourism and parks. The governor may also provide by said executive order for the merger, combination and renaming of any section in the division of tourism and parks. Notwithstanding any provisions in this code to the contrary, no privatization of any park may occur without statutory authority.

(c) The authority to make transfers as provided in subsection (a) of this section shall expire on the first day of January, one thousand nine hundred ninety-five. The authority granted in this section shall not be construed
to permit the governor to transfer the duty and
authority to manage any particular state park or state
recreation area without transferring the duty and
authority to manage all state park and recreation areas.

(d) Upon transfers as authorized in subsection (a) of
this section, the governor may transfer the funds
appropriated to the section transferred or attributable
to the function transferred in order to implement the
transfer: Provided, That the authority to transfer funds
under this section shall expire on the thirtieth day of
June, one thousand nine hundred ninety-five: Provided,
however, That no funds may be transferred from a
special revenue account, dedicated account, capital
expenditure account or any other dedicated account or
fund for any use or purpose other than the purpose for
which the account or fund is dedicated: Provided further,
That nothing herein shall be construed to prohibit the
expenditure of lottery proceeds for those purposes
specifically authorized in subsection (i), section eighteen,
article twenty-two of this code: And provided further,
That of any funds transferred which were appropriated
to the division of tourism and parks and allocated for
purposes of advertising and marketing expenses for the
promotion and development of tourism, not less than
twenty percent of the funds shall be expended to
advertise, promote and market state parks, state forests,
state recreation areas or cultural and wildlife recrea-
tional resources.

(e) Upon the exercise of the powers granted in
subsection (a) of this section, the governor shall submit
to the Legislature a report setting forth the reorgani-
zation implemented by executive action pursuant to this
section, any recommendations for further reorganization
requiring legislative action and drafts of specific
legislation for consideration by the Legislature during
the regular session in the year one thousand nine
hundred ninety-five to conform this code to the reorgan-
ization implemented by executive action.

(f) All persons employed on the effective date of this
section in the division of tourism and parks, the duties
and functions of are transferred pursuant to this section
shall retain their coverage under the civil service system and all matters relating to job classification, job tenure, salary and conditions of employment are governed by the provisions of article six, chapter twenty-nine of this code. The director of the division of natural resources may employ up to six additional unclassified personnel to carry out the purposes of this section, but such additional persons may not be employed to replace any existing employees of the division of tourism and parks transferred to the division of natural resources pursuant to this section.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to ten years' duration; renewal at option of director; termination of contract by the director; necessity for prior legislative approval before certain lodge, cabin, camping, golf facility, including pro shop operations, ski facility or gift shop facilities are placed under contract.

When it is considered necessary by the director to enter into a contract with a person, firm, corporation, foundation or public agency for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, the contract shall be for a duration not to exceed ten years, but the contract may provide for an option to renew at the director's discretion for an additional term or terms not to exceed ten years at the time of renewal. Prior to initiating a contract for the operation of a state park lodge, cabin, campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall submit the specific location which would be subject to the contract to the Legislature for its approval and authorization: Provided, That for contracts for gift shops or golf facilities in specific locations operated under contract on the effective date of this section, and contracts for a duration of not more than one year which provide for options to renew for not more than five succeeding years, notice to the joint
committee on government and finance, but not specific legislative authorization and approval, is required prior to execution of the contract.

Any contract entered into by the director shall provide an obligation upon the part of the operator that he or she maintain a level of performance satisfactory to the director, and shall further provide that any contract may be terminated by the director in the event he or she determines that the performance is unsatisfactory and has given the operator reasonable notice of the termination.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

The West Virginia public energy authority heretofore created is hereby continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are determined to be essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by a nine member board known as the West Virginia public energy authority board which is hereby continued. The nine members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years; two members shall be appointed to serve a term of three years; two members shall be appointed to serve a term of four years; two members shall be appointed to serve a term of five years; and one member shall be appointed to serve a term of six years. The successor of each such appointed member shall be appointed for a term of five years,
except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment of his successor. No more than five of the board members shall at any one time belong to the same political party. No more than four members of the board shall be employed by or associated with any industry this authority is empowered to affect. Two members of the board shall be persons who have significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Before entering upon his or her duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its members as chairman and another as vice chairman, and shall appoint a secretary-treasurer, who need not be a member of the board. Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at any meeting shall be necessary for any action taken by vote of the board. No vacancy in the membership of the board shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

Each member of the board shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official
duties. All such expenses incurred by the board shall be
payable solely from funds of the authority or from funds
appropriated to the authority for such purpose by the
Legislature and no liability or obligation shall be
incurred by the authority beyond the extent to which
moneys are available from funds of the authority or
from such appropriations.

There shall also be a director of the authority
appointed by the governor, with the advice and consent
of the Senate, who shall serve at the governor's will and
pleasure, who shall be responsible for managing and
administering the daily functions of the authority and
for performing any and all other functions necessary or
helpful to the effective functioning of the authority,
together with all other functions and powers as may be
delegated by the board.

§5D-1-5. Powers, duties and responsibilities of authority
generally; termination of certain powers.

The West Virginia public energy authority is hereby
granted, has and may exercise all powers necessary or
appropriate to carry out and effectuate its corporate
purpose. The authority shall have the power and
capacity to:

(1) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the regulation of its
affairs and the conduct of its business and rules and
regulations to implement and make effective its powers
and duties, such rules and regulations to be promul-
gated in accordance with the provisions of chapter
twenty-nine-a of this code.

(2) Adopt and use an official seal and alter the same
at pleasure.

(3) Maintain a principal office and, if necessary,
regional suboffices at locations properly designated or
provided.

(4) Sue and be sued in its own name and plead and
be impleaded in its own name, and particularly to
enforce the obligations and covenants made under this
article. Any actions against the authority shall be
brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral
development industry.

(6) Represent the state with respect to national
initiatives concerning the mineral development indus-
try, and international marketing activities affecting the
mineral development industry.

(7) Engage in strategic planning to enable the state
to cope with changes affecting or which may affect the
mineral development industry.

(8) Acquire, whether by purchase, construction, gift,
lease, lease-purchase or otherwise, any electric power
project or natural gas transmission project. In the event
that an electric power project to be constructed pursuant
to this article is designed to utilize coal wastes for
the generation of electricity or the production of other
energy, such project shall also be capable of using coal
as its primary energy input: Provided, That it shall be
demonstrated to the authority's satisfaction that quan-
tities of coal wastes exist in amounts sufficient to
provide energy input for such project for the term of the
bonds or notes issued by the authority to finance the
project and are accessible to the project.

(9) Lease, lease with an option by the lessee to
purchase, sell, by installment sale or otherwise, or
otherwise dispose of, to persons other than governmental
agencies, any or all of its electric power projects or
natural gas transmission projects for such rentals or
amounts and upon such terms and conditions as the
public energy authority board may deem advisable.

(10) Finance one or more electric power projects or
natural gas transmission projects by making secured
loans to persons other than governmental agencies to
provide funds for the acquisition, by purchase, construc-
tion or otherwise, of any such project or projects.

(11) Issue bonds for the purpose of financing the cost
of acquisition and construction of one or more electric
power projects or natural gas transmission projects or
any additions, extensions or improvements thereto
which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project specific agreement which also takes into account terms and conditions contained in the West Virginia-Ohio valley market retention and recovery agreement or a comparable agreement.

(13) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights
therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority deems proper: Provided, That if the authority determines that land or an interest therein acquired by the authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell such land or interest therein, the authority shall first offer to sell such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value: Provided, however, That if the prior owner or owners shall decline to reacquire the land or interest therein, the authority shall be authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

The term "real property" as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title,
such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section "fair market value" shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(17) Receive and accept from any federal agency,
any other source, grants for or in aid of the construction
of any project or for research and development with
respect to electric power projects, natural gas transmis-
sion projects or other energy projects, and receive and
accept aid or contribution from any source of money,
property, labor or other things of value to be held, used
and applied only for the purpose for which such grants
and contributions are made.

(18) Purchase property coverage and liability insu-
rance for any electric power project or natural gas
transmission project or other energy project and for the
principal office and suboffices of the authority, insu-
rance protecting the authority and its officers and
employees against liability, if any, for damage to
property or injury to or death of persons arising from
its operations and any other insurance which may be
provided for under a resolution authorizing the issuance
of bonds or in any trust agreement securing the same.

(19) Charge, alter and collect transportation fees and
other charges for the use or services of any natural gas
transmission project as provided in this article.

(20) Charge and collect fees or other charges from any
energy project undertaken as a result of this article.

(21) When the electric power project is owned and
operated by the authority, charge reasonable fees in
connection with the making and providing of electric
power and the sale thereof to corporations, states,
municipalities or other entities in the furtherance of the
purposes of this article.

(22) Purchase and sell electricity or other energy
produced by an electric power project in and out of the
state of West Virginia.

(23) Enter into wheeling contracts for the transmis-
ion of electric power over the authority's or another
party's lines.

(24) Make and enter into contracts for the construction
of a project facility and joint ownership with another
utility, and the provisions of this article shall not
constrain the authority from participating as a joint
partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the public service commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending, and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the
approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

(32) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(33) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a of this code, to establish standards and principles to be applied to all projects in assessing the effects of projects on the environment: Provided, That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.

(35) The power and authority granted to the public energy authority pursuant to this section and section six of this article to initiate, acquire, construct, finance or issue bonds for electric power projects and transmission facilities, or to exercise the power of eminent domain with respect to any project, shall terminate on the
CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

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

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

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

(3) Council of finance and administration provided for in article one, chapter five-a of this code;

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

(5) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(6) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;
(7) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen and article six-a, chapter twenty-nine of this code;

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

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

(10) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(11) Division of personnel provided for in article six, chapter twenty-nine of this code;

(12) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(13) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of Commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code;

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

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of
administrative support and liaison with the office of the governor:

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

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

(iii) Mine inspectors' examining board provided for in article nine, chapter twenty-two-a of this code.

(C) The West Virginia development office provided for in article two, chapter five-b, which shall include:

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

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

(D) Division of tourism, which shall consist of those functions related to the promotion of the state's tourism provided for in article one, chapter five-b of this code;

(E) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code shall be under the division of natural resources;

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

(G) Geological and economic survey provided for in article two, chapter nineteen of this code;

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

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code.

(3) Bureau of Environment:

(A) Air quality board provided for in article five,
19 [Enr. Com. Sub. for H. B. 4030]

chapter twenty-two of this code;

(B) Solid waste management board provided for in article three, chapter twenty-two of this code;

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;

(E) Surface mine board of review provided for in article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code.

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

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

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

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

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

(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;
(6) Division of culture and history provided for in article one, chapter twenty-nine of this code;
(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.
(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:
(1) Human rights commission provided for in article eleven, chapter five of this code;
(2) Division of human services provided for in article two, chapter nine of this code;
(3) Division of health provided for in article one, chapter sixteen of this code;
(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;
(5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;
(6) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;
(7) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code; and
(8) Women's commission provided for in article twenty, chapter twenty-nine of this code.
(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:
(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;
(2) Armory board provided for in article six, chapter
21 [Enr. Com. Sub. for H. B. 4030]

162 fifteen of this code;
163 (3) Military awards board provided for in article one-
164 g, chapter fifteen of this code;
165 (4) Division of public safety provided for in article
two, chapter fifteen of this code;
167 (5) Office of emergency services and disaster recovery
board provided for in article five and emergency
response commission provided for in article five-a,
chapter fifteen of this code;
171 (6) Sheriffs' bureau provided for in article eight,
chapter fifteen of this code;
173 (7) Division of corrections provided for in chapter
twenty-five of this code;
175 (8) Fire commission provided for in article three,
chapter twenty-nine of this code;
177 (9) Regional jail and correctional facility authority
provided for in article twenty, chapter thirty-one of this
code;
180 (10) Board of probation and parole provided for in
article twelve, chapter sixty-two of this code; and
182 (11) Division of veterans' affairs and veterans' council
provided for in article one, chapter nine-a of this code.
184 (f) The following agencies and boards, including all of
the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are
hereby transferred to and incorporated in and shall be
administered as a part of the department of tax and
revenue:
190 (1) Tax division provided for in article one, chapter
eleven of this code;
192 (2) Appraisal control and review commission provided
for in article one-a, chapter eleven of this code;
194 (3) Racing commission provided for in article twenty-
three, chapter nineteen of this code;
196 (4) Lottery commission and position of lottery director
provided for in article twenty-two, chapter twenty-nine of this code;

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

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

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

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

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

(10) Division of banking provided for in article two, chapter thirty-one-a of this code.

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

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

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

(3) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

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

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

(6) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;
(7) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(8) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the West Virginia Housing Development Fund;

(1) The municipal bond commission.

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

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

(k) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any

271 ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

281 (l) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a department secretary, or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary, and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that department to a position which was filled by the secretary ex officio.

§5F-2-5. Independent appeal boards.

1 (a) The Legislature finds and declares that it may be desirable and appropriate for certain boards and commissions created by the legislature which may be called upon to review, adjudicate or reverse administrative actions and decisions of agencies of the state to be fiscally and functionally independent of the agency or agencies reviewed, to issue rules and manage day-to-day
operations independently, and to function as independent and autonomous instrumentalities of the state.

(b) To achieve this purpose, the governor may by executive order provide for the transfer from the departments and agencies of the state of any or all of the following boards or commissions which are appellate bodies or were otherwise established to be independent decisionmakers:

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

(2) Workers compensation appeals board and office of judges provided for in article five, chapter twenty-three of this code;

(3) Air quality board provided for in article two, chapter twenty-two-b of this code;

(4) Environmental quality board provided for in article three, chapter twenty-two-b of this code;

(5) Surface mine board provided for in article four, chapter twenty-two-b of this code;

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

(7) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code.

(c) Upon any transfer by executive action authorized in subsection (b) of this section, the governor may provide for administrative support by a department or agency of the state to the board or commission transferred in the same manner as is provided by a department secretary and for liaison with the office of the governor with respect to budgetary and administrative matters through a department or agency of the state: Provided, That nothing in this section shall be construed to affect the existence, powers, authority and duties of independent boards and commissions or the membership, terms and qualifications of members of such boards and commissions.

(d) The authority to make transfers as provided in
subsection (a) of this section shall expire on the first day of January, one thousand nine hundred ninety-five. Upon the exercise of the powers granted in subsection (b) of this section, the governor shall submit to the Legislature a report setting forth the reorganization implemented by executive action pursuant to this section, any recommendations for further reorganization requiring legislative action and drafts of any recommended legislation for consideration by the Legislature during the regular session in the year one thousand nine hundred ninety-five to conform this code to the reorganization implemented by executive action.

(e) Upon transfers as authorized in subsection (a) of this section, the governor may transfer the funds appropriated to the department or agency of the state attributable to the functions of the board or commission transferred in order to implement the transfer: Provided, That the authority to transfer funds under this section shall expire on the thirtieth day of June, one thousand nine hundred ninety-five: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other dedicated account or fund for any use or purpose other than the purpose for which the account or fund is dedicated.

(f) Nothing in this section shall be construed to affect the consolidation of legal, technical and support personnel and of procedures of the air quality board, environmental quality board and surface mining board provided for in article one, chapter twenty-two-b of this code.

§5F-2-6. Reorganization of boards issuing or incurring debt.

(a) The Legislature finds and declares that boards and commissions empowered to issue bonds, incur indebtedness and provide financing or financial services for a public purpose may in some cases benefit the public interest or operate more efficiently through consolidation of legal, technical and support staff or services, sharing of office space, consolidation of procedures, and
cooperation to identify circumstances where one entity may provide services for another, including but not limited to circumstances where one board or commission may finance the programs of another. 

(b) In furtherance of the goal of increased efficiency and cooperation, the director of the debt management division of the board of investments and the secretary of the department of administration are jointly charged with the responsibility of developing and presenting to the boards and commissions, to the board of investments, to the governor, and to the Legislature recommendations for administrative and statutory change. Not later than the first day January, one thousand nine hundred ninety-five, the director and the secretary shall present to the governor and the Legislature a report setting forth their findings, any recommendations for administrative or statutory change and drafts of specific legislation for consideration by the Legislature during the regular session in the year one thousand nine hundred ninety-five. 

(c) The director and the secretary shall invite representatives of the following boards to participate in an ad hoc working group to develop policies and respond to initiatives recommended by the director and the secretary:

(1) Municipal bond commission provided for in article three, chapter thirteen of this code; 
(2) Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code; 
(3) Solid Waste Management Board provided for in article twenty-six, chapter sixteen of this code; 
(4) Water Development Authority provided for in article five-c, chapter twenty of this code; and 
(5) Housing Development Fund provided for in article eighteen, chapter thirty-one of this code. 

The working group shall identify circumstances where one entity may provide services for another, including but not limited to circumstances where one
(d) On and after the effective date of this section, the board of investments, with the assistance of the director of the West Virginia debt management commission, shall provide administrative support and shall act as liaison with the office of the governor with respect to the following entities:

(1) Municipal bond commission provided for in article three, chapter thirteen of this code: Provided, That nothing in this section shall be construed to limit the independence and autonomy of the municipal bond commission;

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

(3) Public energy authority provided for in article one, chapter five-d of this code.

CHAPTER 18. EDUCATION.

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-1. Definitions.

As used in this article and article ten-b:

(1) “State board” means the secretary of the department of education and the arts, or where required by federal law, the board, commission or council designated by the secretary of the department of education and the arts to oversee certain functions of the division of rehabilitation services. All references in this code to the state board of vocational education, except where the context clearly indicates the provision of vocational education to other than disabled individuals, shall mean the state board defined by this subsection.
(2) "Division" means the division of vocational rehabilitation established by this article.

(3) "Director" means the director of the division of vocational rehabilitation.

(4) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an obstruction to occupational performance.

(5) "Disabled individual" means any person who has a substantial employment handicap.

(6) "Vocational rehabilitation" and "vocational rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his employment handicap and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, attendant care services, physical restoration, transportation, occupational licenses, occupational tools and equipment, including motor vehicles, maintenance, and training books and materials.

(7) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(8) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care not to exceed ninety days, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or

51 transitory conditions.
52 (9) "Prosthetic appliance" means any artificial device
53 necessary to support or take the place of a part of the
54 body or to increase the acuity of a sense organ.
55 (10) "Occupational licenses" means any license, permit
56 or other written authority required by any governmen-
57 tal unit to be obtained in order to engage in an
58 occupation.
59 (11) "Maintenance" means money payments not
60 exceeding the estimated cost of subsistence during
61 vocational rehabilitation.
62 (12) "Regulations" means regulations made by the
63 director with the approval of the secretary of the
64 department of education and the arts or the state board.
65 (13) "Attendant care evaluation unit" means any
66 agency certified by the division of vocational rehabili-
67 tation that employs a qualified evaluator to provide
68 evaluations and attendant referrals such as the centers
69 for independent living, the West Virginia rehabilitation
70 center and any other unit approved by the division.
71 (14) "Attendant care services" means services which
72 include, but are not limited to:
73 (a) Routine bodily functions such as bowel and bladder
74 care;
75 (b) Dressing;
76 (c) Ambulation;
77 (d) Meal preparation and consumption;
78 (e) Assistance in moving in and out of bed;
79 (f) Bathing and grooming;
80 (g) Housecleaning and laundry; and
81 (h) Any other similar activity of daily living.
82 (15) "Attendant" means a self-employed individual
83 who is trained to perform attendant care services and
84 who works as an independent contractor.
§18-10A-2. Division of rehabilitation services.

The division of rehabilitation services is hereby transferred to the department of education and the arts created in article one, chapter five-f of this code. The secretary shall appoint any such board, commission, or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and such boards, commissions, or councils as he or she is required by federal law to appoint, are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

References in this article or article ten-b of this chapter to the state board of vocational education, the state board of rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities shall mean the secretary of education and the arts: Provided, That the designation of the department of education and the arts as the designated state agency for purposes of the state's participation in the state-federal rehabilitation program under the federal Rehabilitation Act of 1973 shall be effective upon a finding by the federal Rehabilitation Services Administration that the designation of the department of education and the arts is in conformity with requirements of federal law. Should the Rehabilitation Services Administration issue a formal finding of nonconformance, the state board of education shall be continued as the state board of rehabilitation, shall appoint such advisory boards as are required by federal law, and shall have such powers and duties as are set forth in this article. All references in the code to the division of vocational rehabilitation shall mean the division of rehabilitation services, and all references to the director of the division of vocational rehabilitation shall mean the director of the division of rehabilitation services.

The director shall review the administrative and fiscal structure of the West Virginia rehabilitation hospital and shall report not later than thirtieth day of Sep-
tember, one thousand nine hundred ninety-four to the
joint committee on government and finance. The report
shall include a complete analysis of income and expend-
ditures attributable to the operation of the hospital,
analysis of alternatives for administrative and fiscal
modifications, and recommendations and conclusions as
to whether administrative and fiscal modifications
should be implemented.

Within thirty days of the effective date of this section
the secretary of education and the arts shall hold a
public hearing for the purpose of hearing any concerns
from employees, persons served by the division or other
interested persons related to any impact on programs or
services by the continuation of the division of rehabil-
itation services under the department of education and
the arts.

Notwithstanding the provisions of article ten, chapter
four of this code, the division of rehabilitation services
shall terminate on the first day of July, one thousand
nine hundred ninety-five, to allow for the completion of
a preliminary performance review by the joint commit-
tee on government operations.

§18-10A-3. Director of division of vocational rehabilita-
tion; powers and duties.

The division shall be administered, under the general
supervision and direction of the secretary of the
department of education and the arts or, if required by
federal law his or her designated state board, by a
director appointed by said secretary, or if required by
federal law his or her designated state board in
accordance with established personnel standards and on
the basis of his or her education, training, experience
and demonstrated ability.

In carrying out his or her duties under this article,
the director shall:

(1) Appoint such personnel as he or she deems
necessary for the efficient performance of the functions
of the division.

(2) Establish a merit system of personnel manage-
(3) Make regulations governing the protection of records and confidential information; the manner and form of filing applications for vocational rehabilitation services, eligibility therefor, and investigation and determination thereof; procedures for fair bearings; and such other matters as may be necessary or desirable in accomplishing the purposes of this article.

(4) Have the authority to establish and operate a staff development program for the employees of the division and may, in furtherance of such a program, and utilizing any funds appropriated or made available, for such purpose, pay to such employees compensation or expenses, or both, while such employees are pursuing approved training courses or academic studies for the purpose of becoming better equipped for their employment in such division; such staff development program shall be conducted subject to appropriate rules and regulations as adopted by the director and approved by the state board: Provided, That such rules and regulations shall include reasonable provisions for the return of any employee, receiving the benefits of such training, for a reasonable period of duty, or for reimbursement to the state for expenditures incurred on behalf of the training of such employee.

(5) Establish appropriate subordinate administrative units within the division.

(6) Prepare and submit to the secretary of the department of education and the arts or his or her designated state board annual reports of activities and expenditures and, prior to each regular session of the Legislature, estimates of sums required for carrying out the provisions of this article and estimates of the amounts to be made available for this purpose from all sources.

(7) Make requisition for disbursement, in accordance with regulations of the funds available for vocational rehabilitation purposes.
(8) Take such other action as may be deemed neces-
sary or appropriate to carry out the purposes of this
article.

§18-10A-4. Vocational rehabilitation services.

Except as otherwise provided by law the division shall
provide vocational rehabilitation services to disabled
individuals determined by the director to be eligible
therefor, and for this purpose the division is authorized
among other things to:

(1) Cooperate with other departments, agencies and
institutions, both public and private, in providing for the
vocational rehabilitation of disabled individuals, in
studying the problems involved therein, and in estab-
lishing, developing and providing, in conformity with
the provisions of this article, such programs, facilities
and services as may be necessary or desirable.

(2) Enter into reciprocal agreements with any other
state to provide for the vocational rehabilitation of
residents of such state.

(3) Conduct research and compile statistics relating to
the vocational rehabilitation of disabled individuals.

§18-10A-4a. Attendant care services.

The purpose of this section is to declare the intent of
the state to enable severely physically disabled adults to
enter or continue in the workforce, to enhance the
opportunities for disabled individuals to participate
fully in society through self-fulfillment and economic
independence.

The division shall administer the provision of attend-
ant care services as a separate and distinct program to
any severely physically disabled adult who is present in
the state at the time of filing their application. The
division may administer the program or may enter into
a contract with a private or public organization to
administer and operate the program. If the program is
administered by the division, the funds shall be used as
payments for attendant care services, evaluations,
attendant management training and administrative
costs. If the division enters into a contract with a private
or public organization, the private or public organiza-
tion may use the funds as payments for attendant care
services, evaluations, attendant management training
and for reasonable administrative costs. The administra-
tive costs allowed under the contract shall be negotiated
and approved by the director. The division shall
establish a waiting list of eligible disabled individuals
if sufficient funds are not available under the program.
Determination will be made by a certified evaluation
unit that such adult needs fourteen or more hours of
attendant care per week: Provided, That the severely
physically disabled adult is eighteen years of age or
older, is employed or will be ready for employment
within six months of the time application for services
is made and has a total income of no more than thirty
thousand dollars annually. The maximum income
allowable will be recalculated each year based on
changes in the consumer price index. The eligible adult
shall be reevaluated by a certified evaluation unit at the
direction of the division at least once every two years
to determine their continuing need for attendant care
services. The eligible adult is responsible for hiring,
firing and supervising his or her attendant. Any subsidy
received under the provisions of this section for the
purpose of providing attendant care services shall not
be considered income to the severely disabled person for
any purpose to the extent permitted by federal law and
regulations (IRS Act of 1954) but shall supplement any
other aid for which the adult is eligible.

The division is responsible for accepting applications
for attendant care services from severely physically
disabled adults and making determinations of eligibil-
ity. The division shall provide for certifying evaluation
units and shall make determination regarding certifica-
tion for each evaluation unit which makes application.

The cost of evaluation fees, training of both attendants
and eligible adults in the management of attendants and
provision of attendant care services shall be borne by the
division from funds allocated for this program.

The division shall acquire from a certified evaluation
unit an evaluation of the attendant care needs for each applicant. Within thirty days of the time that any application for attendant care services is filed, the applicant shall be notified that arrangements have been made for the applicant to be evaluated by a certified evaluation unit. Based upon the evaluator's information, the division shall develop a plan for each eligible applicant that shall include the amount of attendant care time needed per week and an estimate of the length of time the attendant care services will be needed. Notice shall be given to the applicant and the evaluator as soon as a decision has been made regarding the eligibility of each applicant. If the recommendations of the certified evaluation unit are not followed, the division shall include the reasons for reaching its decision in the notice sent to the applicant and evaluator.

The division shall promulgate policies and procedures for the administration of this program. The division shall adopt rules and regulations for full fiscal accountability for all appropriated funds and financial assistance shall be given in accordance with a sliding payment scale established by the division. The division shall also establish a consumer advisory committee for the purpose of advising on policies and procedures and related matters involved in administration of the program.

The division shall be responsible for establishing an appeals procedure for those applicants who have been denied attendant care services and for informing all applicants of their right to appeal a decision of the division.


The division, or if required by federal law the board, commission or council appointed by the secretary of the department of education and the arts to oversee certain functions of the division, shall make agreements or plans to cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and to this end may adopt such methods of administration as are found by the federal
government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.


The director is hereby authorized and empowered to accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of this article. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of this article may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.


Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the division shall be entitled, in accordance with regulations, to a fair hearing.

§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.

The division, under the direction of any federally mandated board, commission or council appointed by the secretary of the department of education and the arts, is authorized and directed to cooperate with the federal government in providing vocational evaluation and work adjustment services to disadvantaged individuals.

"Vocational evaluation and work adjustment services" include, as appropriate in each case, such services as:

(a) A preliminary diagnostic study to determine that the individual is disadvantaged, has an employment handicap, and that services are needed;

(b) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential.
including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

(c) Services to appraise the individual's patterns of work behavior and ability to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(d) Any other goods or services provided to a disadvantaged individual, determined (in accordance with regulations of the federal government) to be necessary for, and which are provided for the purpose of, ascertaining the nature of the handicap to employment and whether it may reasonably be expected the individual can benefit from vocational rehabilitation services or other services available to disadvantaged individuals;

(e) Outreach, referral, and advocacy; and

(f) The administration of these evaluation and work adjustment services.

As used in this section, the term "disadvantaged individuals" means: (1) Disabled individuals as defined in subdivision five, section one of this article; (2) individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions which constitute a barrier to employment; and (3) other members of their families when the provision of vocational rehabilitation services to family members is necessary for the rehabilitation of the individual described in subdivision (1) or (2) above.

CHAPTER 19. AGRICULTURE

ARTICLE 12A. LAND DIVISION.
§19-12A-1a. Farm management commission abolished; property transferred; powers and duties of commissioner of agriculture.

(a) The farm management commission previously established by this article is hereby abolished. The real and personal property held by the commission, including all institutional farms and all easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories and farm facilities, operating revenue funds for those operations, and all employees of the farm management commission, are hereby transferred to the department of agriculture. The commissioner of the department of agriculture shall have all those powers, duties and responsibilities previously vested in the farm management commission and the farm management director pursuant to this article.

(b) Not later than the first day of January, one thousand nine hundred ninety-five, the commissioner of the department of agriculture shall report to the Legislature on the optimum use or disposition of each institutional farm transferred pursuant to this section. The commissioner shall set forth the objectives of the agency with respect to the land, the criteria by which the agency has determined the optimum use or disposition of the property, and determinations as to whether the land shall be used in the production of food products, the production or development of natural resources, held for recreational or other specified uses, or sold, or leased in whole or in part. With respect to each institutional farm, the commissioner shall report on which properties are subject to reversionary clauses or other restrictions in deeds of conveyance which may affect permitted uses, or proposed sales or leases. With respect to each institutional farm, the commissioner shall report on projected revenues and expenses from operations. Planned activities and uses with respect to the land shall be detailed for at least five years specifically and at least ten years generally and shall include a cost benefit analysis of options or alternatives for action. In the case of land managed for production of timber, the commissioner shall report on projections for timber harvesting...
on a sustained-yield basis, income estimates, and the
years in which income will be generated. The report
shall detail planned actions to protect the land from
erosion, fire, plant and animal pests, noxious insects,
noxious weeds and plant and animal diseases. In the
case of land subject to rights granted by existing
contracts, leases, licenses or easements, the report shall
include a determination as to whether the interest
granted should be continued or withdrawn. In the case
of land managed under land management plans adopted
prior to the effective date of this section, land manage-
ment plans shall be reviewed and amended as may be
necessary. When appropriate, the commissioner shall
consult with the secretaries of the various departments
of state government and shall request from the secre-
taries suggestions for land use and resource develop-
ment on the land. In the case of land recommended for
sale, lease, or transfer, the report shall include the
review and approval of the director of the West Virginia
development office of the proposed use and alternate
suggestions for use of any institutional farm which may
be in the public interest. The report shall include a plan
to transfer the Weston state hospital institutional farm,
located at Weston, Lewis county, which shall include not
less than three hundred fifty acres, to the department
of health and human resources not later than the first
day of July, one thousand nine hundred ninety-five, for
use as a behavioral health center or other related
purposes. If the report discloses that no reversionary
clauses or other restrictions in deeds of conveyance
prohibit the proposed use, and that the proposed use is
practicable, the transfer of the Weston state hospital
farm to the department of health and human resources
is specifically authorized.

(c) Nothing in this section shall be construed to limit
the duties imposed on the department of health and
human resources and the division of corrections to
purchase food products pursuant to section five of this
article and to make interdepartmental transfers pursu-
ant to section six of this article: Provided, That
purchases shall be made from and transfers made to the
department of agriculture.
(d) Nothing in this section shall be construed to invalidate any action or contractual obligation of the farm management commission prior to the effective date of this section.

(e) Notwithstanding the provisions of subsection (b) of this section, in any case where the farm management commission has determined by motion adopted prior to the effective date of this act that an institutional farm or part thereof should be transferred or disposed of, or authorized any formal agreement for this purpose, whether or not any documents related to the agreement have been reduced to writing or executed, the commissioner shall execute all documents and take all necessary actions to implement the transfer or disposition of the property.

(f) For any land transferred to the public land corporation for sale, exchange or transfer pursuant to section five of this article, the farm property shall be offered for sale in both small parcels of land and as whole farms and shall be sold in the form which brings the highest price for the total property. For purposes of this subsection, "small parcels" means parcels of no more than five acres.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.


This article shall be known and cited as the "West Virginia State Rail Authority Act."

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority.

The West Virginia railroad maintenance authority, heretofore created, is hereby continued and redesignated the West Virginia state rail authority. References in this code to the West Virginia railroad maintenance authority shall be understood and taken to mean the West Virginia state rail authority. Nothing in this act is intended to invalidate any action or obligation of the West Virginia railroad maintenance authority under-
taken prior to the effective date of this act. The
authority is a governmental instrumentality of the state
and a body corporate. The exercise by the authority of
the powers conferred by this article and the carrying out
of its purposes and duties shall be deemed and held to
be, and are hereby determined to be, essential govern-
mental functions and for a public purpose.

The authority shall consist of seven members. The
secretary of the department of transportation shall be
a member ex officio. The other six members shall be
appointed by the governor, by and with the advice and
consent of the Senate, for a term of six years. Of the
members of the authority first appointed, two shall be
appointed for a term ending on the thirtieth day of June,
one thousand nine hundred seventy-seven, two shall be
appointed for a term ending two years thereafter and
two shall be appointed for a term ending four years
thereafter. A person appointed to fill a vacancy occur-
ing prior to the expiration of the term for which his
predecessor was appointed shall be appointed only for
the remainder of such term. Each authority member
shall serve until the appointment and qualification of his
successor. No more than three of the appointed authority
members shall at any one time belong to the same
political party. Appointed authority members may be
reappointed to serve additional terms.

All members of the authority shall be citizens of the
state. Each appointed member of the board, before
entering upon his duties, shall comply with the require-
ments of article one, chapter six of this code and give
bond in the sum of twenty-five thousand dollars in the
manner provided in article two, chapter six of this code.
The governor may remove any authority member for
cause as provided in article six, chapter six of this code.

Annually the authority shall elect one of its members
as chairman and another as vice chairman, and shall
appoint a secretary-treasurer, who need not be a
member of the authority. Four members of the authority
shall constitute a quorum and the affirmative vote of
four members shall be necessary for any action taken
by vote of the authority. No vacancy in the membership
of the authority shall impair the rights of a quorum by
such vote to exercise all the rights and perform all the
duties of the authority. The person appointed as
secretary-treasurer, including an authority member if
he is so appointed, shall give bond in the sum of fifty
thousand dollars in the manner provided in article two,
chapter six of this code.

The secretary of the department of transportation
shall not receive any compensation for serving as an
authority member. Each of the six appointed members
of the authority shall receive the same compensation and
expense reimbursement as is paid to members of the
Legislature for their interim duties as recommended by
the citizens legislative compensation commission and
authorized by law for each day or substantial portion
thereof engaged in the discharge of official duties. All
such compensation and expenses incurred shall be
payable solely from funds of the authority or from funds
appropriated for such purpose by the Legislature and
no liability or obligation shall be incurred by the
authority beyond the extent to which moneys are
available from funds of the authority or from such
appropriations.

There shall also be a director of the authority
appointed by the authority

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1994.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th
day of March, 1994.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/30/94
Time 12:57 PM