

HB # 4493

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. 4493

(By Delegate S. McKinley, L. White, Higgins,
Lindsay, Priddy and Varner)



Passed March 12, 1994

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4493

(By DELEGATES MCKINLEY, L. WHITE, HIGGINS,
LINDSEY, TRIBETT AND VARNER)

[Passed March 12, 1994; in effect from passage.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; to amend and reenact section three, article one, chapter twenty-five; and to amend and reenact section five, article twenty, chapter thirty-one of said code, all relating to creating a pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; creation of the commission for distribution of surplus foods; powers and duties; definitions; program maintenance; authorizing the executive director of the regional jail and prison authority and the commissioner of the division of corrections to serve on the commission and implement the pilot program.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-17. Pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; commission for distribution of surplus foods; powers and duties; definitions; program continuance.

1 (a) The purpose of the Legislature in enacting this
2 section is to establish a framework for the distribution
3 of excess and leftover foods in West Virginia public
4 school cafeterias and in correctional facilities to
5 community agencies that serve homeless and needy
6 people in this state and to address findings that:

7 (1) Many homeless, destitute and needy people are
8 without sufficient food to meet minimum requirements
9 for daily living;

10 (2) Many school cafeterias and prison cafeterias
11 prepare a large number of meals each day;

12 (3) Despite state and federal policies and guidelines
13 and proper efforts of personnel at such institutions
14 which attempt to eliminate or minimize the waste of
15 unserved prepared food at such public institutions, that
16 some surplusage of leftover food does in fact occur; and

17 (4) Various community agencies are trying to feed the
18 homeless and needy people and that leftover foods from
19 the aforesaid public institutions is an obvious resource
20 to help provide food for the homeless and needy people
21 of the state.

22 (b) For purposes of this section the following terms
23 shall have the following meanings:

24 (1) "Leftover food" means food prepared for imme-
25 diate human consumption but not served, that cannot be
26 refrigerated or preserved to be served at a later time,
27 nor used in the preparation of other foods, or unopened
28 packaged foods, unopened cartons of milk and parcels
29 of whole fruit which are taken by consumers at the
30 institution, but not eaten, or is not subject to being
31 reserved according to policies or rules governing the

32 service of food at the institution;

33 (2) "Agency" means any nonprofit, religious or
34 charitable organization which is exempt from taxation
35 pursuant to 26 U.S.C. §501(c) (3) or (4) whose purposes
36 include the feeding of homeless and needy persons.

37 (3) "Commission" means the commission distribution
38 of surplus food established in subsection (c) of this
39 section.

40 (c) There is hereby established a commission for the
41 distribution of surplus prepared foods. The superintend-
42 ent of the state board of education, or his or her
43 designee, shall serve as chair of the commission. The
44 executive director of the regional jail and prison
45 authority, or his or her designee, and the commissioner
46 of the division of corrections, of the department of public
47 safety, or his or her designee, shall serve as members
48 of the commission.

49 (d) The commission shall develop and establish a pilot
50 program in Ohio County for the distribution of leftover
51 foods from secondary school cafeterias, the county jail
52 in Ohio County and the regional jail located in Marshall
53 County to community agencies in Ohio County to be
54 distributed to homeless and needy persons in Ohio
55 County, consistent with the goals and purposes estab-
56 lished in this section. The pilot program shall provide
57 that an agency pay any cost of transporting the leftover
58 food. In no event may the pilot program provide that the
59 state bear any of the cost of transporting the leftover
60 food.

61 (e) The commission shall have the following powers
62 and duties in carrying out the provisions of this section:

63 (1) Propose for promulgation legislative rules in
64 accordance with article three, chapter twenty-nine-a of
65 this code which are necessary to carry out the purposes
66 of this section;

67 (2) Suggest modification of policies and propose
68 amendments to current rules of the state board of
69 education, the division of corrections and the regional
70 jail authority which are in conflict with the purpose and

71 goals of this section, only as such are applicable to the
72 public institutions included in this pilot program;

73 (3) Coordinate and cooperate with all appropriate
74 federal agencies, including, but not limited to, the
75 United States department of agriculture to approve the
76 distribution of leftover foods under controlled
77 conditions;

78 (4) Draft cooperative and mutually beneficial agree-
79 ments between the respective agencies and the local
80 school or district or correctional facilities;

81 (5) Develop a comprehensive plan of food distribution
82 to agencies including consideration of any input or
83 suggestions from agencies interested in participation in
84 the plan; such plan shall address the care of environ-
85 mental resources and human needs. Any plan or
86 program for food distribution shall require that the cost
87 of transporting the food is to be paid by a community
88 agency. The commission has no authority to develop a
89 comprehensive plan of food distribution which would
90 provide that the state pay all or any part of the cost of
91 transporting the food to be distributed.

92 (f) The pilot program shall commence no later than
93 the first day of September, one thousand nine hundred
94 ninety-four, and continue until the first day of July, one
95 thousand nine hundred ninety-seven, unless sooner
96 terminated by the Legislature. On the first Wednesday
97 after the second Monday of each January, the commis-
98 sion shall report to the governor and the Legislature on
99 the progress of the program whether it should be
100 continued or discontinued, any recommended modifica-
101 tions in the program's scope and mission and whether
102 any action is necessary by the Legislature to improve the
103 success of the program. At the end of the pilot program,
104 the commission shall make a final report to the governor
105 and the Legislature as to whether the findings in this
106 section are being addressed and recommend whether or
107 not the program shall be expanded statewide, with
108 specific recommendations for program support and
109 administration, development and other relevant policy
110 issues.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and human resources and state board of health; establishment of work and study release units; civil service coverage.

1 The commissioner of corrections shall manage, direct,
2 control and govern the following penal or correctional
3 institutions and any others placed under his jurisdiction
4 or control:

5 West Virginia Penitentiary at Moundsville;

6 West Virginia State Prison for Women at Pence
7 Springs;

8 West Virginia Medium Security Prison at
9 Huttonsville;

10 West Virginia Industrial Home for Girls at Salem;

11 West Virginia Industrial Home for Boys at Grafton;

12 Davis Center (formerly the West Virginia Forestry
13 Camp for Boys at Davis);

14 Leckie Center (formerly the West Virginia Forestry
15 Camp for Boys at Leckie); and

16 Anthony Center (formerly the Anthony Correctional
17 Center).

18 Jurisdiction of and title to the West Virginia Child-
19 ren's Home at Elkins are hereby transferred to the
20 department of health and human resources, which shall
21 be the custodian of all deeds and other muniments of
22 title to such property and shall cause such as are
23 susceptible of recordation to be recorded in the proper
24 offices. Notwithstanding any provision of this code to the
25 contrary, the West Virginia Children's Home shall be
26 managed and controlled by a superintendent appointed
27 by the commissioner of health and human resources.

28 The commissioner is hereby authorized to establish

29 work and study release units as extensions and subsid-
30 iaries of those state institutions under his or her control
31 and authority. Such work and study release units may
32 be coeducational and shall be managed, directed and
33 controlled as provided for in this article.

34 The commissioner is hereby authorized to serve as a
35 member of the commission for distribution of surplus
36 foods and exercise all powers and authority otherwise
37 granted to him or her in this article to implement the
38 pilot program for delivery of leftover prepared foods at
39 any institution under his or her control and supervision,
40 pursuant to section seventeen, article two, chapter
41 eighteen of this code.

42 Any person employed by the office of public institu-
43 tions who on the effective date of this article is a
44 classified civil service employee shall, within the limits
45 contained in section two, article six, chapter twenty-nine
46 of this code, remain in the civil service system as a
47 covered employee.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-5. Powers and duties of the authority; bidding procedures.

1 The regional jail and correctional facility authority
2 shall complete a comprehensive study of all correctional
3 facilities and jail facilities in the state of West Virginia
4 no later than the first day of July, one thousand nine
5 hundred eighty-six. This study shall include an assess-
6 ment of the physical conditions of confinement within
7 the institutions and the relative need for the institutions
8 when considering other available institutions of confine-
9 ment located within the state.

10 After completing this study, the authority shall
11 submit a plan to the governor on the establishment of
12 regional jails in this state and the acquisition, construc-
13 tion or renovation of facilities for correctional facilities.
14 The authority shall specify groups of counties within the
15 state to be formed into regions for the establishment of

16 such regional jails. Within each region a local jail
17 commission shall be established and have the powers
18 and duties as set forth in section six of this article.

19 The authority shall consider, but not be limited to, the
20 following when creating the plan establishing regions:

21 (1) The relative physical condition of the correctional
22 facilities and jail facilities located within the state;

23 (2) The transportation costs associated with the
24 establishment of centralized jail services, including, but
25 not limited to, the costs of transporting persons incar-
26 cerated in regional jails to court appearances, to
27 interviews with their attorneys, and to have visitation
28 with their families and friends, all in any county seat
29 of a county served by the regional facility: *Provided,*
30 That consideration of such costs in the creation of the
31 plan shall not be construed to require the transportation
32 of inmates to interviews with their attorneys or to have
33 visitation with their families and friends when visitation
34 facilities and schedules are established in regional jails;

35 (3) The availability of medical services and educa-
36 tional and recreational opportunities;

37 (4) Information received from public hearings;

38 (5) The relative efficiency in the cost of jail services
39 caused by establishment of regional jail facilities;

40 (6) Available facilities which may be used as regional
41 jails or correctional facilities including, but not limited
42 to, existing county and state owned properties: *Provided,*
43 That if the authority determines that an existing facility
44 meets the standards or could reasonably be made to
45 meet the standards for a regional jail or other correc-
46 tional facility, the authority may proceed to acquire such
47 existing facility and compensate the owner thereof in an
48 amount not less than any local share expended by the
49 owner as matching moneys for the receipt of federal
50 funds: *Provided, however,* That if the authority deter-
51 mines that an existing facility does not meet the
52 standards or could not reasonably be made to meet the
53 standards for a regional jail or other correctional
54 facility, the authority shall provide the owner with a

55 written statement setting forth the reasons supporting
56 such determination;

57 (7) The cost of acquiring, constructing, renovating,
58 operating and maintaining local jail facilities for use as
59 local holding facilities in each county and regional jail
60 facilities for each county and the financing provided by
61 this article;

62 (8) The leasing of any available portion of any regional
63 jail space and the leasing of available facilities of any
64 regional jail to the West Virginia department of
65 corrections for the keeping and detaining of prisoners
66 sentenced to serve terms of incarceration under the
67 custody of the West Virginia department of corrections
68 for nonviolent crimes and to contract with the depart-
69 ment of corrections for the providing of food, clothing,
70 shelter and any and all incidental costs in the care,
71 control and maintenance of such prisoners: *Provided,*
72 That such leasing does not restrict space or facilities
73 needed for the detention of county prisoners;

74 (9) The advisability and cost effectiveness of acquir-
75 ing, constructing, renovating, operating and maintain-
76 ing work farms serving one or more counties or regions;
77 and

78 (10) The proximity of possible sites for the regional
79 jail facilities to residential areas, schools, churches and
80 other public buildings and facilities.

81 Public hearings pursuant to this section shall be held
82 by the authority in convenient locations throughout the
83 state. No less than ten public hearings shall be held for
84 public comment on the establishment of regional jails.
85 The authority shall cause to be published at least two
86 weeks in advance of a hearing a Class II-0 legal
87 advertisement, as provided in section two, article three,
88 chapter fifty-nine of this code, setting forth the reason
89 for the hearing and the time, place and date thereof. The
90 publication area shall be each county which may be
91 included in a region for the purposes of a regional jail
92 with the county in which the public hearing is held.

93 In addition to the hearing requirements above, before

94 beginning construction of a new facility for use as a
95 regional jail or correctional facility or before beginning
96 renovation or acquisition of an existing facility for use
97 as a regional jail facility, which existing facility is not
98 already a jail, correctional facility or secure facility for
99 the detention of juveniles or persons otherwise involun-
100 tarily committed or confined, the authority shall hold a
101 hearing for comment by all members of the public on
102 all aspects relating to the advisability of the use of the
103 site for that regional jail facility. The authority shall
104 promulgate legislative rules pursuant to chapter twenty-
105 nine-a of this code for the requirements for notice and
106 other procedures of said public hearings, which require-
107 ments shall be as similar as practicable to those
108 hearings conducted regarding the construction of
109 bridges by the West Virginia department of highways.

110 The authority, as a public corporation and governmen-
111 tal instrumentality exercising public powers of the state,
112 may exercise all powers necessary or appropriate to
113 carry out the purposes of this article, including, but not
114 limited to, the power:

115 (a) To acquire, own, hold and dispose of property, real
116 and personal, tangible and intangible.

117 (b) To lease property, whether as lessee or lessor.

118 (c) To mortgage or otherwise grant security interests
119 in its property.

120 (d) To conduct examinations and investigations and to
121 hear testimony and take proof, under oath or affirma-
122 tion at public or private hearings, on any matter
123 relevant to this article and necessary for information on
124 the construction or renovation of any correctional
125 facility or the establishment of any correctional facility
126 industries project.

127 (e) To issue subpoenas requiring the attendance of
128 witnesses and the production of books and papers
129 relevant to any hearing before such authority or one or
130 more members appointed by it to conduct any hearing.

131 (f) To apply to the circuit court having venue of such
132 offense to have punished for contempt any witness who

133 refuses to obey a subpoena, refuses to be sworn or
134 affirmed, or refuses to testify, or who commits any
135 contempt after being summoned to appear.

136 (g) To sue and be sued, implead and be impleaded, and
137 complain and defend in any court.

138 (h) To adopt, use and alter at will a corporate seal.

139 (i) To make bylaws for the management and regula-
140 tion of its affairs pursuant to article three, chapter
141 twenty-nine-a of this code.

142 (j) To appoint officers, agents and employees.

143 (k) To make contracts of every kind and nature and
144 to execute all instruments necessary or convenient for
145 carrying on its business, including contracts with any
146 other governmental agency of this state or of the federal
147 government or with any person, individual, partnership
148 or corporation to effect any or all of the purposes of this
149 article.

150 (l) Without in any way limiting any other subdivision
151 of this section, to accept grants from and enter into
152 contracts and other transactions with any federal
153 agency.

154 (m) To borrow money and to issue its negotiable
155 bonds, security interests or notes and to provide for and
156 secure the payment thereof, and to provide for the rights
157 of the holders thereof, and to purchase, hold and dispose
158 of any of its bonds, security interests or notes: *Provided*,
159 That no bond or other obligation may be issued or
160 incurred unless and until the Legislature by concurrent
161 resolution has approved the purpose and amount of each
162 project for which proceeds from the issuance of such
163 bond or other obligation will be used.

164 (n) To sell, at public or private sale, any bond or other
165 negotiable instrument, security interest or obligation of
166 the authority in such manner and upon such terms as
167 the authority considers would best serve the purposes of
168 this article.

169 (o) To issue its bonds, security interests and notes
170 payable solely from the revenues or other funds

171 available to the authority therefor; and the authority
172 may issue its bonds, security interests or notes in such
173 principal amounts as it considers necessary to provide
174 funds for any purposes under this article, including:

175 (1) The payment, funding or refunding of the princi-
176 pal of, interest on or redemption premiums on, any
177 bonds, security interests or notes issued by it whether
178 the bonds, security interests, notes or interest to be
179 funded or refunded have or have not become due.

180 (2) The establishment or increase of reserves to secure
181 or to pay bonds, security interests, notes or the interest
182 thereon and all other costs or expenses of the authority
183 incident to and necessary or convenient to carry out its
184 corporate purposes and powers. Any bonds, security
185 interests or notes may be additionally secured by a
186 pledge of any revenues, funds, assets or moneys of the
187 authority from any source whatsoever.

188 (p) To issue renewal notes or security interests, to
189 issue bonds to pay notes or security interests and,
190 whenever it considers refunding expedient, to refund
191 any bonds by the issuance of new bonds, whether the
192 bonds to be refunded have or have not matured except
193 that no such renewal notes shall be issued to mature
194 more than ten years from date of issuance of the notes
195 renewed and no such refunding bonds may be issued to
196 mature more than twenty-five years from the date of
197 issuance.

198 (q) To apply the proceeds from the sale of renewal
199 notes, security interests or refunding bonds to the
200 purchase, redemption or payment of the notes, security
201 interests or bonds to be refunded.

202 (r) To accept gifts or grants of property, funds,
203 security interests, money, materials, labor, supplies or
204 services from the United States of America or from any
205 governmental unit or any person, firm or corporation,
206 and to carry out the terms or provisions of, or make
207 agreements with respect to, or pledge, any gifts or
208 grants, and to do any and all things necessary, useful,
209 desirable or convenient in connection with the procur-
210 ing, acceptance or disposition of gifts or grants.

211 (s) To the extent permitted under its contracts with
212 the holders of bonds, security interests or notes of the
213 authority, to consent to any modification of the rate of
214 interest, time of payment of any installment of principal
215 or interest, security or any other term of any bond,
216 security interest, note or contract or agreement of any
217 kind to which the authority is a party.

218 (t) To sell security interests in the loan portfolio of the
219 authority. Such security interests shall be evidenced by
220 instruments issued by the authority. Proceeds from the
221 sale of security interests may be issued in the same
222 manner and for the same purposes as bond and note
223 revenues.

224 (u) To promulgate rules, in accordance with the
225 provisions of chapter twenty-nine-a of this code, to
226 implement and make effective the powers, duties and
227 responsibilities invested in the authority by the provi-
228 sions of this article and otherwise by law.

229 (v) To assume the responsibility for operation and
230 management of regional jail facilities under the juris-
231 diction of the state regional jail and correctional facility
232 authority. The authority shall provide for the transpor-
233 tation of inmates between the regional jails and local
234 holding facilities for court appearances.

235 (w) To exercise all power and authority provided in
236 this article necessary and convenient to plan, finance,
237 construct, renovate, maintain and operate or oversee the
238 operation of regional jails and correctional facilities.

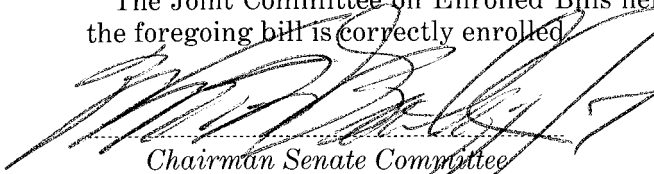
239 (x) To cooperate with the commission for distribution
240 of surplus foods and to authorize the executive director
241 to exercise all power and authority provided in this
242 section necessary to implement the pilot program for
243 delivery of leftover prepared foods at the regional jail
244 located in Marshall County, pursuant to section seven-
245 teen, article two, chapter eighteen of this code.

246 Notwithstanding any other provision of this section,
247 the regional jail and correctional facility authority shall
248 no later than the first day of November, one thousand
249 nine hundred eighty-nine, submit a plan to the joint

250 committee on government and finance of the Legislature
251 detailing the means by which the authority will comply
252 with the mandates of the supreme court of appeals as
253 to the structural and internal conditions and programs
254 of the correctional facilities in this state. In preparing
255 such plan, the authority is to allow for and consider any
256 input from the public.

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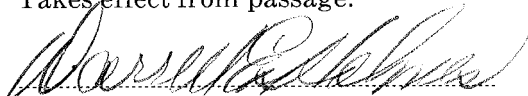
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

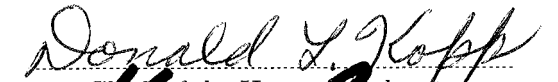

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Chairman Senate Committee

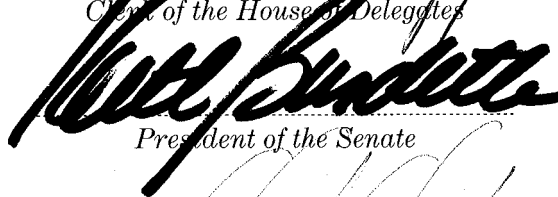

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Chairman House Committee

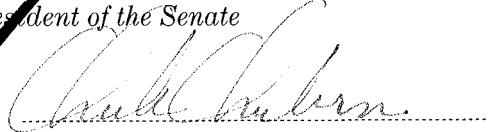
Originating in the House.

Takes effect from passage.

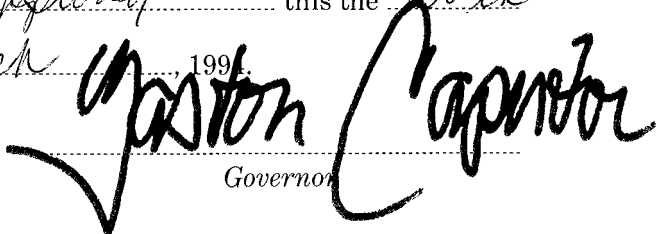

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Clerk of the Senate


.....
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* 199*1*.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/28/94

Time

4:15 pm