

HB 4030

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MARTINSBURG, WEST VIRGINIA

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* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4030

(By 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.

1 (a) The division of tourism and parks and the office
2 of commissioner of tourism and parks is hereby abol-
3 ished effective the first day of July, one thousand nine
4 hundred ninety-five. Not later than the first day of
5 January, one thousand nine hundred ninety-five, the
6 sections and functions of the division of tourism and
7 parks related to state parks, state recreation areas and
8 wildlife recreation areas shall be transferred to the
9 division of natural resources and all sections and
10 functions of the division of tourism and parks related to
11 tourism shall be transferred to the West Virginia
12 development office.

13 (b) The governor shall, by executive order, implement
14 the transfer of sections and functions provided for in
15 subsection (a) of this section. The governor may provide
16 by said executive order for the transfer, in whole or in
17 part, of any section in the division of tourism and parks
18 and the offices, assets, liabilities, contracts, property,
19 records, personnel, and functions of any section in the
20 division of tourism and parks. The governor may also
21 provide by said executive order for the merger, combi-
22 nation and renaming of any section in the division of
23 tourism and parks. Notwithstanding any provisions in
24 this code to the contrary, no privatization of any park
25 may occur without statutory authority.

26 (c) The authority to make transfers as provided in
27 subsection (a) of this section shall expire on the first day
28 of January, one thousand nine hundred ninety-five. The
29 authority granted in this section shall not be construed

30 to permit the governor to transfer the duty and
31 authority to manage any particular state park or state
32 recreation area without transferring the duty and
33 authority to manage all state park and recreation areas.

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

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

68 (f) All persons employed on the effective date of this
69 section in the division of tourism and parks, the duties
70 and functions of are transferred pursuant to this section

71 shall retain their coverage under the civil service system
72 and all matters relating to job classification, job tenure,
73 salary and conditions of employment are governed by
74 the provisions of article six, chapter twenty-nine of this
75 code. The director of the division of natural resources
76 may employ up to six additional unclassified personnel
77 to carry out the purposes of this section, but such
78 additional persons may not be employed to replace any
79 existing employees of the division of tourism and parks
80 transferred to the division of natural resources pursuant
81 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.**

1 When it is considered necessary by the director to
2 enter into a contract with a person, firm, corporation,
3 foundation or public agency for the operation of a
4 commissary, restaurant, recreational facility or other
5 such establishment within the state parks and public
6 recreation system, the contract shall be for a duration
7 not to exceed ten years, but the contract may provide
8 for an option to renew at the director's discretion for an
9 additional term or terms not to exceed ten years at the
10 time of renewal. Prior to initiating a contract for the
11 operation of a state park lodge, cabin, campground, gift
12 shop, golf facility, including pro shop operations, or ski
13 facility, the director shall submit the specific location
14 which would be subject to the contract to the Legislature
15 for its approval and authorization: *Provided*, That for
16 contracts for gift shops or golf facilities in specific
17 locations operated under contract on the effective date
18 of this section, and contracts for a duration of not more
19 than one year which provide for options to renew for not
20 more than five succeeding years, notice to the joint

21 committee on government and finance, but not specific
22 legislative authorization and approval, is required prior
23 to execution of the contract.

24 Any contract entered into by the director shall provide
25 an obligation upon the part of the operator that he or
26 she maintain a level of performance satisfactory to the
27 director, and shall further provide that any contract
28 may be terminated by the director in the event he or
29 she determines that the performance is unsatisfactory
30 and has given the operator reasonable notice of the
31 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 con- tinued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

1 The West Virginia public energy authority heretofore
2 created is hereby continued. The authority is a govern-
3 mental instrumentality of the state and a body corpo-
4 rate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its
6 purposes and duties are determined to be essential
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and
9 operated by a nine member board known as the West
10 Virginia public energy authority board which is hereby
11 continued. The nine members of the board shall be
12 appointed by the governor, by and with the advice and
13 consent of the Senate. Two members shall be appointed
14 to serve a term of two years; two members shall be
15 appointed to serve a term of three years; two members
16 shall be appointed to serve a term of four years; two
17 members shall be appointed to serve a term of five
18 years; and one member shall be appointed to serve a
19 term of six years. The successor of each such appointed
20 member shall be appointed for a term of five years,

21 except that any person appointed to fill a vacancy
22 occurring prior to the expiration of the term for which
23 his predecessor was appointed shall be appointed only
24 for the remainder of such term. Each board member
25 shall serve until the appointment of his successor. No
26 more than five of the board members shall at any one
27 time belong to the same political party. No more than
28 four members of the board shall be employed by or
29 associated with any industry this authority is empow-
30 ered to affect. Two members of the board shall be
31 persons who have significant experience in the advocacy
32 of environmental protection. Board members may be
33 reappointed to serve additional terms.

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

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

56 Each member of the board shall receive the same
57 compensation and expense reimbursement as is paid to
58 members of the Legislature for their interim duties as
59 recommended by the citizens legislative compensation
60 commission and authorized by law for each day or
61 portion thereof engaged in the discharge of official

62 duties. All such expenses incurred by the board shall be
63 payable solely from funds of the authority or from funds
64 appropriated to the authority for such purpose by the
65 Legislature and no liability or obligation shall be
66 incurred by the authority beyond the extent to which
67 moneys are available from funds of the authority or
68 from such appropriations.

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

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

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

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

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

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

18 (4) Sue and be sued in its own name and plead and
19 be impleaded in its own name, and particularly to
20 enforce the obligations and covenants made under this
21 article. Any actions against the authority shall be

22 brought in the circuit court of Kanawha County.

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

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

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

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

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

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

57 (11) Issue bonds for the purpose of financing the cost
58 of acquisition and construction of one or more electric
59 power projects or natural gas transmission projects or
60 any additions, extensions or improvements thereto

61 which will be sold, leased with an option by the lessee
62 to purchase, leased or otherwise disposed of to persons
63 other than governmental agencies or for the purpose of
64 loaning the proceeds thereof to persons other than
65 governmental agencies for the acquisition and construc-
66 tion of said projects or both. Such bonds shall be issued
67 and the payment of such bonds secured in the manner
68 provided by the applicable provisions of sections seven,
69 eight, nine, ten, eleven, twelve, thirteen and seventeen,
70 article two-c, chapter thirteen of this code: *Provided,*
71 That the principal and interest on such bonds shall be
72 payable out of the revenues derived from the lease, lease
73 with an option by the lessee to purchase, sale or other
74 disposition of or from loan payments in connection with
75 the electric power project or natural gas transmission
76 project for which the bonds are issued, or any other
77 revenue derived from such electric power project or
78 natural gas transmission project.

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

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

97 (14) Acquire in the name of the state, by purchase or
98 otherwise, on such terms and in such manner as it
99 deems proper, or by the exercise of the right of eminent
100 domain in the manner provided in chapter fifty-four of
101 this code, such real property or parts thereof or rights

102 therein, rights-of-way, property, rights, easements and
103 interests it deems necessary for carrying out the
104 provisions of this article, and compensation shall be paid
105 for public or private lands so taken; and the authority
106 may sell any of the real property or parts thereof or
107 rights therein, rights-of-way, property, rights, ease-
108 ments and interests acquired hereunder in such manner
109 and upon such terms and conditions as the authority
110 deems proper: *Provided*, That if the authority deter-
111 mines that land or an interest therein acquired by the
112 authority through the exercise of the power of eminent
113 domain for the purpose of this article is no longer
114 necessary or useful for such purposes, and if the
115 authority desires to sell such land or interest therein, the
116 authority shall first offer to sell such land or interest to
117 the owner or owners from whom it was acquired, at a
118 price equal to its fair market value: *Provided, however*,
119 That if the prior owner or owners shall decline to
120 reacquire the land or interest therein, the authority
121 shall be authorized to dispose of such property by direct
122 sale, auction, or competitive bidding. In no case shall
123 such land or an interest therein acquired under this
124 subdivision be sold for less than its fair market value.
125 This article does not authorize the authority to take or
126 disturb property or facilities belonging to any public
127 utility or to a common carrier, which property or
128 facilities are required for the proper and convenient
129 operation of such public utility or common carrier,
130 except for the acquisition of easements or rights-of-way
131 which will not unreasonably interfere with the operation
132 of the property or facilities of such public utility or
133 common carrier, and in the event of the taking or
134 disturbance of property or facilities of public utility or
135 common carrier, provision shall be made for the
136 restoration, relocation or duplication of such property or
137 facilities elsewhere at the sole cost of the authority.

138 The term "real property" as used in this article is
139 defined to include lands, structures, franchises and
140 interests in land, including lands under water and
141 riparian rights, and any and all other things and rights
142 usually included within the said term, and includes also
143 any and all interests in such property less than full title,

144 such as easements, rights-of-way, uses, leases, licenses
145 and all other incorporeal hereditaments and every
146 estate, interest or right, legal or equitable, including
147 terms for years and liens thereon by way of judgments,
148 mortgages or otherwise, and also all claims for damages
149 for such real estate.

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

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

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

183 (17) Receive and accept from any federal agency, or

184 any other source, grants for or in aid of the construction
185 of any project or for research and development with
186 respect to electric power projects, natural gas transmis-
187 sion projects or other energy projects, and receive and
188 accept aid or contribution from any source of money,
189 property, labor or other things of value to be held, used
190 and applied only for the purpose for which such grants
191 and contributions are made.

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

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

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

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

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

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

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

223 partner therein.

224 (25) Make and enter into joint ownership agreements.

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

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

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

242 (29) Enter upon any lands, waters and premises in the
243 state for the purpose of making surveys and examina-
244 tions as it may deem necessary or convenient for the
245 purpose of this article, and such entry shall not be
246 deemed a trespass, nor shall an entry for such purposes
247 be deemed an entry under any condemnation proceed-
248 ings which may be then pending, and the authority shall
249 make reimbursement for any actual damages resulting
250 to such lands, waters and premises as a result of such
251 activities.

252 (30) Participate in any reorganization proceeding
253 pending pursuant to the United States Code (being the
254 act of Congress establishing a uniform system of
255 bankruptcy throughout the United States, as amended)
256 or any receivership proceeding in a state or federal
257 court for the reorganization or liquidation of a respon-
258 sible buyer or responsible tenant. The authority may file
259 its claim against any such responsible buyer or respon-
260 sible tenant in any of the foregoing proceedings, vote
261 upon any question pending therein, which requires the

262 approval of the creditors participating in any reorgan-
263 ization proceeding or receivership, exchange any
264 evidence of such indebtedness for any property, security
265 or evidence of indebtedness offered as a part of the
266 reorganization of such responsible buyer or responsible
267 tenant or of any entity formed to acquire the assets
268 thereof and may compromise or reduce the amount of
269 any indebtedness owing to it as a part of any such
270 reorganization.

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

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

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

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

296 (35) The power and authority granted to the public
297 energy authority pursuant to this section and section six
298 of this article to initiate, acquire, construct, finance or
299 issue bonds for electric power projects and transmission
300 facilities, or to exercise the power of eminent domain
301 with respect to any project, shall terminate on the

302 effective date of this section: *Provided*, That nothing
303 herein shall be construed to affect the validity of any act
304 of the public energy authority prior the the effective
305 date of this section or to impair the rights of bond-
306 holders with respect to bonds or other evidence of
307 indebtedness issued prior to the effective date of this
308 section. Following the effective date of this section, the
309 public energy authority may exercise any power
310 expressly granted pursuant to this section or section six
311 of this article with respect to any project or facility
312 previously constructed or acquired, any existing con-
313 tractual obligations, and any outstanding bonded
314 indebtedness.

**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.**

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

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

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

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

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

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

18 (6) Commission on uniform state laws provided for in
19 article one-a, chapter twenty-nine of this code;

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

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

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

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

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

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

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

35 (b) The department of commerce, labor and environ-
36 mental resources and the office of secretary of the
37 department of commerce, labor and environmental
38 resources are hereby abolished. For purposes of admi-
39 nistrative support and liaison with the office of the
40 governor, the following agencies and boards, including
41 all allied, advisory and affiliated entities shall be
42 grouped under three bureaus as follows:

43 (1) Bureau of Commerce:

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

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

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

52 (B) Office of miners' health, safety and training
53 provided for in article one, chapter twenty-two-a of this
54 code. The following boards are transferred to the office
55 of miners' health, safety and training for purposes of

56 administrative support and liaison with the office of the
57 governor:

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

61 (ii) Board of miner training, education and certifica-
62 tion provided for in article seven, chapter twenty-two-
63 a of this code; and

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

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

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

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

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

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

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

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

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

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

89 (3) Bureau of Environment:

90 (A) Air quality board provided for in article five,

91 chapter twenty-two of this code;

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

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

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

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

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

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

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

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

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

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

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

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

123 (5) Joint commission for vocational-technical-occupa-
124 tional education provided for in article three-a, chapter
125 eighteen-b of this code;

126 (6) Division of culture and history provided for in
127 article one, chapter twenty-nine of this code;

128 (7) Division of rehabilitation services provided for in
129 section two, article ten-a, chapter eighteen of this code.

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

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

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

140 (3) Division of health provided for in article one,
141 chapter sixteen of this code;

142 (4) Office of emergency medical services and advisory
143 council thereto provided for in article four-c, chapter
144 sixteen of this code;

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

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

149 (7) Commission on mental retardation provided for in
150 article fifteen, chapter twenty-nine of this code; and

151 (8) Women's commission provided for in article
152 twenty, chapter twenty-nine of this code.

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

159 (1) Adjutant general's department provided for in
160 article one-a, chapter fifteen of this code;

161 (2) Armory board provided for in article six, chapter

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
166 two, chapter fifteen of this code;

167 (5) Office of emergency services and disaster recovery
168 board provided for in article five and emergency
169 response commission provided for in article five-a,
170 chapter fifteen of this code;

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

173 (7) Division of corrections provided for in chapter
174 twenty-five of this code;

175 (8) Fire commission provided for in article three,
176 chapter twenty-nine of this code;

177 (9) Regional jail and correctional facility authority
178 provided for in article twenty, chapter thirty-one of this
179 code;

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

182 (11) Division of veterans' affairs and veterans' council
183 provided for in article one, chapter nine-a of this code.

184 (f) The following agencies and boards, including all of
185 the allied, advisory, affiliated or related entities and
186 funds associated with any such agency or board, are
187 hereby transferred to and incorporated in and shall be
188 administered as a part of the department of tax and
189 revenue:

190 (1) Tax division provided for in article one, chapter
191 eleven of this code;

192 (2) Appraisal control and review commission provided
193 for in article one-a, chapter eleven of this code;

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

196 (4) Lottery commission and position of lottery director

197 provided for in article twenty-two, chapter twenty-nine
198 of this code;

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

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

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

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

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

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

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

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

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

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

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

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

230 (6) Aeronautics commission provided for in article
231 two-a, chapter twenty-nine of this code;

232 (7) State rail authority provided for in article
233 eighteen, chapter twenty-nine of this code; and

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

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

242 (1) The municipal bond commission.

243 (i) Except for such powers, authority and duties as
244 have been delegated to the secretaries of the depart-
245 ments by the provisions of section two of this article, the
246 existence of the position of administrator and of the
247 agency and the powers, authority and duties of each
248 administrator and agency shall not be affected by the
249 enactment of this chapter.

250 (j) Except for such powers, authority and duties as
251 have been delegated to the secretaries of the depart-
252 ments by the provisions of section two of this article, the
253 existence, powers, authority and duties of boards and
254 the membership, terms and qualifications of members
255 of such boards shall not be affected by the enactment
256 of this chapter, and all boards which are appellate
257 bodies or were otherwise established to be independent
258 decisionmakers shall not have their appellate or
259 independent decision-making status affected by the
260 enactment of this chapter.

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

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

281 (l) When an agency, board or commission is trans-
282 ferred under a bureau or agency other than a depart-
283 ment headed by a secretary pursuant to this section, that
284 transfer shall be construed to be solely for purposes of
285 administrative support and liaison with the office of the
286 governor, a department secretary, or a bureau. The
287 bureaus created by the Legislature upon the abolish-
288 ment of the department of commerce, labor and
289 environmental resources in the year one thousand nine
290 hundred ninety-four shall be headed by a commissioner
291 or other statutory officer of an agency within that
292 bureau. Nothing in this section shall be construed to
293 extend the powers of department secretaries under
294 section two of this article to any person other than a
295 department secretary, and nothing herein shall be
296 construed to limit or abridge the statutory powers and
297 duties of statutory commissioners or officers pursuant to
298 this code. Upon the abolishment of the office of secretary
299 of the department of commerce, labor and environmen-
300 tal resources, the governor may appoint a statutory
301 officer serving functions formerly within that depart-
302 ment to a position which was filled by the secretary ex
303 officio.

§5F-2-5. Independent appeal boards.

1 (a) The Legislature finds and declares that it may be
2 desirable and appropriate for certain boards and
3 commissions created by the legislature which may be
4 called upon to review, adjudicate or reverse administra-
5 tive actions and decisions of agencies of the state to be
6 fiscally and functionally independent of the agency or
7 agencies reviewed, to issue rules and manage day-to-day

8 operations independently, and to function as independ-
9 ent and autonomous instrumentalities of the state.

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

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

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

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

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

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

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

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

31 (c) Upon any transfer by executive action authorized
32 in subsection (b) of this section, the governor may
33 provide for administrative support by a department or
34 agency of the state to the board or commission trans-
35 ferred in the same manner as is provided by a depart-
36 ment secretary and for liaison with the office of the
37 governor with respect to budgetary and administrative
38 matters through a department or agency of the state:
39 *Provided*, That nothing in this section shall be construed
40 to affect the existence, powers, authority and duties of
41 independent boards and commissions or the member-
42 ship, terms and qualifications of members of such
43 boards and commissions.

44 (d) The authority to make transfers as provided in

45 subsection (a) of this section shall expire on the first day
46 of January, one thousand nine hundred ninety-five.
47 Upon the exercise of the powers granted in subsection
48 (b) of this section, the governor shall submit to the
49 Legislature a report setting forth the reorganization
50 implemented by executive action pursuant to this
51 section, any recommendations for further reorganization
52 requiring legislative action and drafts of any recom-
53 mended legislation for consideration by the Legislature
54 during the regular session in the year one thousand nine
55 hundred ninety-five to conform this code to the reorgan-
56 ization implemented by executive action.

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

70 (f) Nothing in this section shall be construed to affect
71 the consolidation of legal, technical and support person-
72 nel and of procedures of the air quality board, environ-
73 mental quality board and surface mining board pro-
74 vided for in article one, chapter twenty-two-b of this
75 code.

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

1 (a) The Legislature finds and declares that boards and
2 commissions empowered to issue bonds, incur indebted-
3 ness and provide financing or financial services for a
4 public purpose may in some cases benefit the public
5 interest or operate more efficiently through consolida-
6 tion of legal, technical and support staff or services,
7 sharing of office space, consolidation of procedures, and

8 cooperation to identify circumstances where one entity
9 may provide services for another, including but not
10 limited to circumstances where one board or commission
11 may finance the programs of another.

12 (b) In furtherance of the goal of increased efficiency
13 and cooperation, the director of the debt management
14 division of the board of investments and the secretary
15 of the department of administration are jointly charged
16 with the responsibility of developing and presenting to
17 the boards and commissions, to the board of invest-
18 ments, to the governor, and to the Legislature recom-
19 mendations for administrative and statutory change.
20 Not later than the first day January, one thousand nine
21 hundred ninety-five, the director and the secretary shall
22 present to the governor and the Legislature a report
23 setting forth their findings, any recommendations for
24 administrative or statutory change and drafts of specific
25 legislation for consideration by the Legislature during
26 the regular session in the year one thousand nine
27 hundred ninety-five.

28 (c) The director and the secretary shall invite repre-
29 sentatives of the following boards to participate in an
30 ad hoc working group to develop policies and respond
31 to initiatives recommended by the director and the
32 secretary:

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

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

37 (3) Solid Waste Management Board provided for in
38 article twenty-six, chapter sixteen of this code;

39 (4) Water Development Authority provided for in
40 article five-c, chapter twenty of this code; and

41 (5) Housing Development Fund provided for in article
42 eighteen, chapter thirty-one of this code.

43 The working group shall identify circumstances
44 where one entity may provide services for another,
45 including but not limited to circumstances where one

46 spending unit may finance the programs of another, to
47 insure that the terms of any indebtedness are the terms
48 most beneficial to the state. The director and the
49 secretary shall facilitate cooperation between the boards
50 and commissions in developing specific legislation for
51 consideration by the Legislature during the regular
52 session of the Legislature in the year one thousand nine
53 hundred ninety-five.

54 (d) On and after the effective date of this section, the
55 board of investments, with the assistance of the director
56 of the West Virginia debt management commission,
57 shall provide administrative support and shall act as
58 liaison with the office of the governor with respect to
59 the following entities:

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

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

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

CHAPTER 18. EDUCATION.

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-1. Definitions.

1 As used in this article and article ten-b:

2 (1) "State board" means the secretary of the depart-
3 ment of education and the arts, or where required by
4 federal law, the board, commission or council designated
5 by the secretary of the department of education and the
6 arts to oversee certain functions of the division of
7 rehabilitation services. All references in this code to the
8 state board of vocational education, except where the
9 context clearly indicates the provision of vocational
10 education to other than disabled individuals, shall mean
11 the state board defined by this subsection.

12 (2) "Division" means the division of vocational
13 rehabilitation established by this article.

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

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

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

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

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

42 (8) "Physical restoration" means any medical, surgical
43 or therapeutic treatment necessary to correct or
44 substantially reduce a disabled individual's employment
45 handicap within a reasonable length of time including,
46 but not limited to, medical, psychiatric, dental and
47 surgical treatment, nursing services, hospital care not
48 to exceed ninety days, convalescent home care, drugs,
49 medical and surgical supplies, and prosthetic applian-
50 ces, 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.

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

13 References in this article or article ten-b of this
14 chapter to the state board of vocational education, the
15 state board of rehabilitation or the state board as the
16 governing board of vocational or other rehabilitation
17 services or facilities shall mean the secretary of
18 education and the arts: *Provided*, That the designation
19 of the department of education and the arts as the
20 designated state agency for purposes of the state's
21 participation in the state-federal rehabilitation program
22 under the federal Rehabilitation Act of 1973 shall be
23 effective upon a finding by the federal Rehabilitation
24 Services Administration that the designation of the
25 department of education and the arts is in conformity
26 with requirements of federal law. Should the Rehabil-
27 itation Services Administration issue a formal finding
28 of nonconformance, the state board of education shall be
29 continued as the state board of rehabilitation, shall
30 appoint such advisory boards as are required by federal
31 law, and shall have such powers and duties as are set
32 forth in this article. All references in the code to the
33 division of vocational rehabilitation shall mean the
34 division of rehabilitation services, and all references to
35 the director of the division of vocational rehabilitation
36 shall mean the director of the division of rehabilitation
37 services.

38 The director shall review the administrative and fiscal
39 structure of the West Virginia rehabilitation hospital
40 and shall report not later than thirtieth day of Sep-

41 tember, one thousand nine hundred ninety-four to the
42 joint committee on government and finance. The report
43 shall include a complete analysis of income and expen-
44 ditures attributable to the operation of the hospital,
45 analysis of alternatives for administrative and fiscal
46 modifications, and recommendations and conclusions as
47 to whether administrative and fiscal modifications
48 should be implemented.

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

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

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

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

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

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

15 (2) Establish a merit system of personnel manage-

16 ment, or in lieu thereof, avail himself or herself of the
17 services of the state merit system upon payment of a fair
18 share of the expenses of the operation of such system.

19 (3) Make regulations governing the protection of
20 records and confidential information; the manner and
21 form of filing applications for vocational rehabilitation
22 services, eligibility therefor, and investigation and
23 determination thereof; procedures for fair hearings; and
24 such other matters as may be necessary or desirable in
25 accomplishing the purposes of this article.

26 (4) Have the authority to establish and operate a staff
27 development program for the employees of the division
28 and may, in furtherance of such a program, and
29 utilizing any funds appropriated or made available, for
30 such purpose, pay to such employees compensation or
31 expenses, or both, while such employees are pursuing
32 approved training courses or academic studies for the
33 purpose of becoming better equipped for their employ-
34 ment in such division; such staff development program
35 shall be conducted subject to appropriate rules and
36 regulations as adopted by the director and approved by
37 the state board: *Provided*, That such rules and regula-
38 tions shall include reasonable provisions for the return
39 of any employee, receiving the benefits of such training,
40 for a reasonable period of duty, or for reimbursement
41 to the state for expenditures incurred on behalf of the
42 training of such employee.

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

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

53 (7) Make requisition for disbursement, in accordance
54 with regulations of the funds available for vocational
55 rehabilitation purposes.

56 (8) Take such other action as may be deemed neces-
57 sary or appropriate to carry out the purposes of this
58 article.

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

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

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

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

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

§18-10A-4a. Attendant care services.

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

7 The division shall administer the provision of attend-
8 ant care services as a separate and distinct program to
9 any severely physically disabled adult who is present in
10 the state at the time of filing their application. The
11 division may administer the program or may enter into
12 a contract with a private or public organization to
13 administer and operate the program. If the program is
14 administered by the division, the funds shall be used as
15 payments for attendant care services, evaluations,
16 attendant management training and administrative

17 costs. If the division enters into a contract with a private
18 or public organization, the private or public organiza-
19 tion may use the funds as payments for attendant care
20 services, evaluations, attendant management training
21 and for reasonable administrative costs. The administra-
22 tive costs allowed under the contract shall be negotiated
23 and approved by the director. The division shall
24 establish a waiting list of eligible disabled individuals
25 if sufficient funds are not available under the program.
26 Determination will be made by a certified evaluation
27 unit that such adult needs fourteen or more hours of
28 attendant care per week: *Provided*, That the severely
29 physically disabled adult is eighteen years of age or
30 older, is employed or will be ready for employment
31 within six months of the time application for services
32 is made and has a total income of no more than thirty
33 thousand dollars annually. The maximum income
34 allowable will be recalculated each year based on
35 changes in the consumer price index. The eligible adult
36 shall be reevaluated by a certified evaluation unit at the
37 direction of the division at least once every two years
38 to determine their continuing need for attendant care
39 services. The eligible adult is responsible for hiring,
40 firing and supervising his or her attendant. Any subsidy
41 received under the provisions of this section for the
42 purpose of providing attendant care services shall not
43 be considered income to the severely disabled person for
44 any purpose to the extent permitted by federal law and
45 regulations (IRS Act of 1954) but shall supplement any
46 other aid for which the adult is eligible.

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

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

57 The division shall acquire from a certified evaluation

58 unit an evaluation of the attendant care needs for each
59 applicant. Within thirty days of the time that any
60 application for attendant care services is filed, the
61 applicant shall be notified that arrangements have been
62 made for the applicant to be evaluated by a certified
63 evaluation unit. Based upon the evaluator's information,
64 the division shall develop a plan for each eligible
65 applicant that shall include the amount of attendant
66 care time needed per week and an estimate of the length
67 of time the attendant care services will be needed.
68 Notice shall be given to the applicant and the evaluator
69 as soon as a decision has been made regarding the
70 eligibility of each applicant. If the recommendations of
71 the certified evaluation unit are not followed, the
72 division shall include the reasons for reaching its
73 decision in the notice sent to the applicant and evaluator.

74 The division shall promulgate policies and procedures
75 for the administration of this program. The division
76 shall adopt rules and regulations for full fiscal accoun-
77 tability for all appropriated funds and financial
78 assistance shall be given in accordance with a sliding
79 payment scale established by the division. The division
80 shall also establish a consumer advisory committee for
81 the purpose of advising on policies and procedures and
82 related matters involved in administration of the
83 program.

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

§18-10A-5. Cooperation with federal government.

1 The division, or if required by federal law the board,
2 commission or council appointed by the secretary of the
3 department of education and the arts to oversee certain
4 functions of the division, shall make agreements or plans
5 to cooperate with the federal government in carrying
6 out the purposes of any federal statutes pertaining to
7 vocational rehabilitation and to this end may adopt such
8 methods of administration as are found by the federal

9 government to be necessary for the proper and efficient
10 operation of such agreements or plans for vocational
11 rehabilitation and to comply with such conditions as
12 may be necessary to secure the full benefits of such
13 federal statutes.

§18-10A-7. Gifts.

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

§18-10A-9. Grievance hearings.

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

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

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

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

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

13 (b) A thorough diagnostic study consisting of a
14 comprehensive evaluation of pertinent medical, psycho-
15 logical, vocational, educational, cultural, social, and
16 environmental factors which bear on the individual's
17 handicap to employment and rehabilitation potential

18 including, to the degree needed, an evaluation of the
19 individual's personality, intelligence level, educational
20 achievements, work experience, vocational aptitudes
21 and interests, personal and social adjustments, employ-
22 ment opportunities, and other pertinent data helpful in
23 determining the nature and scope of services needed;

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

32 (d) Any other goods or services provided to a disad-
33 vantaged individual, determined (in accordance with
34 regulations of the federal government) to be necessary
35 for, and which are provided for the purpose of, ascer-
36 taining the nature of the handicap to employment and
37 whether it may reasonably be expected the individual
38 can benefit from vocational rehabilitation services or
39 other services available to disadvantaged individuals;

40 (e) Outreach, referral, and advocacy; and

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

43 As used in this section, the term "disadvantaged
44 individuals" means: (1) Disabled individuals as defined
45 in subdivision five, section one of this article; (2)
46 individuals disadvantaged by reason of their youth or
47 advanced age, low educational attainments, ethnic or
48 cultural factors, prison or delinquency records, or other
49 conditions which constitute a barrier to employment;
50 and (3) other members of their families when the
51 provision of vocational rehabilitation services to family
52 members is necessary for the rehabilitation of the
53 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.

1 (a) The farm management commission previously
2 established by this article is hereby abolished. The real
3 and personal property held by the commission, includ-
4 ing all institutional farms and all easements, mineral
5 rights, appurtenances, farm equipment, agricultural
6 products, inventories and farm facilities, operating
7 revenue funds for those operations, and all employees of
8 the farm management commission, are hereby trans-
9 ferred to the department of agriculture. The commis-
10 sioner of the department of agriculture shall have all
11 those powers, duties and responsibilities previously
12 vested in the farm management commission and the
13 farm management director pursuant to this article.

14 (b) Not later than the first day of January, one
15 thousand nine hundred ninety-five, the commissioner of
16 the department of agriculture shall report to the
17 Legislature on the optimum use or disposition of each
18 institutional farm transferred pursuant to this section.
19 The commissioner shall set forth the objectives of the
20 agency with respect to the land, the criteria by which
21 the agency has determined the optimum use or dispo-
22 sition of the property, and determinations as to whether
23 the land shall be used in the production of food products,
24 the production or development of natural resources, held
25 for recreational or other specified uses, or sold, or leased
26 in whole or in part. With respect to each institutional
27 farm, the commissioner shall report on which properties
28 are subject to reversionary clauses or other restrictions
29 in deeds of conveyance which may affect permitted uses,
30 or proposed sales or leases. With respect to each
31 institutional farm, the commissioner shall report on
32 projected revenues and expenses from operations.
33 Planned activities and uses with respect to the land shall
34 be detailed for at least five years specifically and at least
35 ten years generally and shall include a cost benefit
36 analysis of options or alternatives for action. In the case
37 of land managed for production of timber, the commis-
38 sioner shall report on projections for timber harvesting

39 on a sustained-yield basis, income estimates, and the
40 years in which income will be generated. The report
41 shall detail planned actions to protect the land from
42 erosion, fire, plant and animal pests, noxious insects,
43 noxious weeds and plant and animal diseases. In the
44 case of land subject to rights granted by existing
45 contracts, leases, licenses or easements, the report shall
46 include a determination as to whether the interest
47 granted should be continued or withdrawn. In the case
48 of land managed under land management plans adopted
49 prior to the effective date of this section, land manage-
50 ment plans shall be reviewed and amended as may be
51 necessary. When appropriate, the commissioner shall
52 consult with the secretaries of the various departments
53 of state government and shall request from the secre-
54 taries suggestions for land use and resource develop-
55 ment on the land. In the case of land recommended for
56 sale, lease, or transfer, the report shall include the
57 review and approval of the director of the West Virginia
58 development office of the proposed use and alternate
59 suggestions for use of any institutional farm which may
60 be in the public interest. The report shall include a plan
61 to transfer the Weston state hospital institutional farm,
62 located at Weston, Lewis county, which shall include not
63 less than three hundred fifty acres, to the department
64 of health and human resources not later than the first
65 day of July, one thousand nine hundred ninety-five, for
66 use as a behavioral health center or other related
67 purposes. If the report discloses that no reversionary
68 clauses or other restrictions in deeds of conveyance
69 prohibit the proposed use, and that the proposed use is
70 practicable, the transfer of the Weston state hospital
71 farm to the department of health and human resources
72 is specifically authorized.

73 (c) Nothing in this section shall be construed to limit
74 the duties imposed on the department of health and
75 human resources and the division of corrections to
76 purchase food products pursuant to section five of this
77 article and to make interdepartmental transfers pursu-
78 ant to section six of this article: *Provided*, That
79 purchases shall be made from and transfers made to the
80 department of agriculture.

81 (d) Nothing in this section shall be construed to
82 invalidate any action or contractual obligation of the
83 farm management commission prior to the effective
84 date of this section.

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

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-1. Short title.

1 This article shall be known and cited as the "West
2 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.**

1 The West Virginia railroad maintenance authority,
2 heretofore created, is hereby continued and redesign-
3 nated the West Virginia state rail authority. References
4 in this code to the West Virginia railroad maintenance
5 authority shall be understood and taken to mean the
6 West Virginia state rail authority. Nothing in this act
7 is intended to invalidate any action or obligation of the
8 West Virginia railroad maintenance authority under-

9 taken prior to the effective date of this act. The
10 authority is a governmental instrumentality of the state
11 and a body corporate. The exercise by the authority of
12 the powers conferred by this article and the carrying out
13 of its purposes and duties shall be deemed and held to
14 be, and are hereby determined to be, essential govern-
15 mental functions and for a public purpose.

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

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

43 Annually the authority shall elect one of its members
44 as chairman and another as vice chairman, and shall
45 appoint a secretary-treasurer, who need not be a
46 member of the authority. Four members of the authority
47 shall constitute a quorum and the affirmative vote of
48 four members shall be necessary for any action taken
49 by vote of the authority. No vacancy in the membership

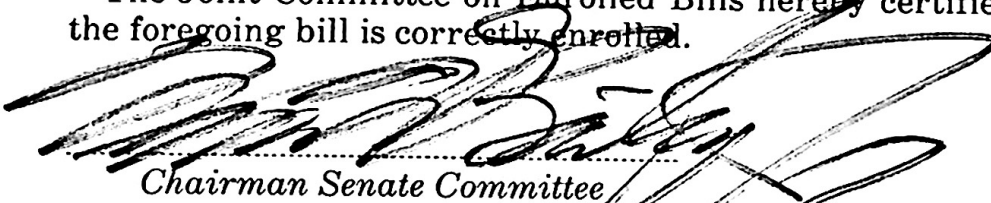
50 of the authority shall impair the rights of a quorum by
51 such vote to exercise all the rights and perform all the
52 duties of the authority. The person appointed as
53 secretary-treasurer, including an authority member if
54 he is so appointed, shall give bond in the sum of fifty
55 thousand dollars in the manner provided in article two,
56 chapter six of this code.

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

73 There shall also be a director of the authority
74 appointed by the authority.

Enr. Com. Sub. for H. B. 4030] 44

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



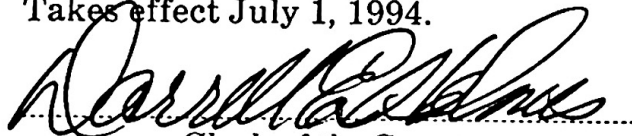
Chairman Senate Committee



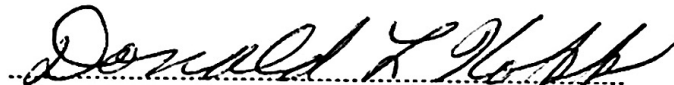
Chairman House Committee

Originating in the House.

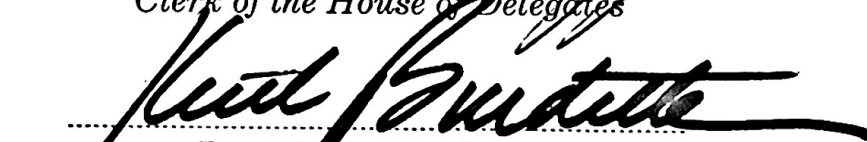
Takes effect July 1, 1994.



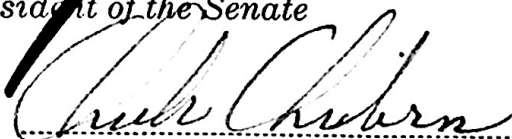
Clerk of the Senate



Clerk of the House of Delegates

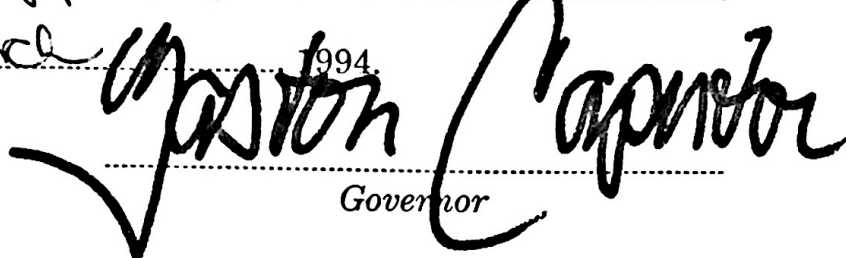


President of the Senate



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