WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

SECOND
ENROLLMENT

House Bill No. 4702
(By Delegates Michael, Mezzatesia, Doyle, Clements, Leggett and Frederick)

Passed March 21, 1998

In Effect from Passage
AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; to amend and reenact sections one-a, two, three, four, five, eight, nine, ten and twenty-six, article twenty, chapter thirty-one of said code; to further amend said article by adding thereto three new sections, designated sections five-c, eight-a and nine-a; and to amend and reenact sections fourteen, fifteen and seventeen, article three, chapter thirty-three of said code, all relating to providing for the administrative structure and funding of juvenile and adult detention and corrections, construction, operations, maintenance and oversight; providing that the regional jail and correctional facility authority may finance certain costs through the investment management board; requiring the investment management board to invest certain funds available for investment from the public employees retirement system in the state's regional jail and correctional facility system; limiting the amount that may be transferred; loan repayment; requiring authority to certify a list of projects; rate of return on investments; creating funds; requiring lawsuit; specifying court where lawsuit shall be filed; providing that the authority may design, finance and
construct or renovate and repair juvenile facilities; adding definitions; revising the composition, powers and duties of the authority; revising the composition and scope of authority of the jail and correctional facility standards commission; creating a separate standards commission for juvenile facilities and providing for the appointment of members; specifying powers and duties of the juvenile facilities standards commission; authorizing the regional jail and correctional facility authority to construct new facilities or renovate existing facilities to be used for secure predisposition detention of juveniles, for juvenile transfer facilities and for juvenile correctional facilities and allowing said facilities to be adjacent to regional jails under certain circumstance; redefining the regional jail and correctional facility development fund; including discretionary oversight of juvenile facilities under the jurisdiction of the legislative oversight committee on regional jails and correctional facilities; providing for the disposition of certain designated insurance tax revenues; eliminating obsolete and superfluous provisions; and providing a reasonable return on the investment by dedicating a portion of revenues generated from certain designated insurance taxes.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-20. Investment with regional jail and correctional facility authority.
(a) The Legislature finds and declares:

(1) That the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements;

(2) That construction of capital improvements requires that the cost of the facilities be financed over time; that capital improvements cannot be funded out of the current year appropriations of the Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit;

(3) That while the supreme court of appeals is empowered to interpret the laws, including the constitution of the state, section one, article ten of the constitution grants to the Legislature the power of taxation; section fifty-one, article six of the constitution grants to the Legislature the power of appropriation; and section one, article five of the constitution prohibits any branch of government from exercising powers properly belonging to another;

(4) That the enacting of new taxes, or the diversion of revenues from other essential departments and functions of government, in order to support capital improvements in jails and correctional facilities, is not in the interests of the people of the state represented in the Legislature, and is specifically rejected by the Legislature in its exercise of its legitimate constitutional powers;

(5) That the decision of the supreme court of appeals, imposing a duty on the state to construct and pay for capital improvements to jails and correctional facilities arising out of the Bill of Rights of the United States constitution declared ratified in the year one thousand seven hundred ninety-one, and the state constitution of the year one thousand eight hundred sixty-three, constitutes a prior liability of the state within the meaning of section
four, article ten of the constitution and an exception to the constitutional limitation on contracting state debt;

(6) That the construction of capital improvements of jail and correctional facilities may be funded through funds available for investment through the West Virginia investment management board, invested in such a manner as to be assured as high a rate of return as would be earned if these funds were otherwise invested, and repaid by the state as provided in this article.

(b) The investment management board shall upon request of the regional jail and correctional facility authority transfer moneys as an investment, from funds available for investment from the public employees retirement system, to the regional jail and correctional facility authority. The amount transferred may not exceed one hundred fifty million dollars in the aggregate and shall be used for the purposes of financing construction of regional jails, correctional facilities, juvenile detention facilities, juvenile correctional facilities, or extensions, renovations, improvements or additions thereto, or for the replacement or renovation of existing facilities. If the board has loaned money to the state building commission under subsection (b), section nineteen of this article, the total amount loaned shall be repaid to the board from funds made available under the investment made pursuant to this section. Prior to the expenditure of any of the funds, the regional jail and correctional facility authority shall certify to the joint committee on government and finance a list of projects that are to be funded from the invested funds. This certified list may not thereafter be altered or amended other than by legislative enactment. Funds shall be invested with the regional jail and correctional facility authority as requested by the regional jail and correctional facility authority. The money invested shall earn a return at a rate equal to the annualized rate of return earned by the core fixed-income portfolio of the public employees retirement system over the previous five years, plus one tenth of one percent: Provided, That in all events this rate of return may not be less than five percent per annum. The monthly rate of return shall be calculated every quarter. The manner and
The timing of the investment shall be determined by the board. The total of the amounts invested may not exceed a total of one hundred fifty million dollars during fiscal year one thousand nine hundred ninety-eight, and fiscal year one thousand nine hundred ninety-nine, cumulatively. The authority to make the investment authorized by this section expires on the thirtieth day of June, one thousand nine hundred ninety-nine.

(c) There is created in the state treasury a regional jail and correctional facility investment fund dedicated to the payment of investment earnings and the return of capital invested under this section. The treasurer shall administer the fund. The fund is an interest-bearing account with interest earned credited to and deposited back into the fund. The fund consists of amounts required to be deposited by section fourteen, article three, chapter thirty-three of this code.

(d) The treasurer shall, monthly, transfer amounts from the regional jail and correctional facility investment fund to the board that are sufficient to allow investment earnings to be paid and the capital invested returned in substantially equal amounts by the thirty-first day of August, two thousand twenty-three: Provided, That the amount of investment earnings paid and the capital invested returned during the fiscal year beginning the first day of July, one thousand nine hundred ninety-eight, may not exceed ten million dollars. Payment representing investment earnings and the return of capital invested shall begin six months from the date the initial funds are invested, or by the tenth day of January, one thousand nine hundred ninety-nine, whichever is later.

(e) The board shall calculate the amount of the projected annual investment earnings to be paid and the capital invested to be returned and certify the amount to the treasurer on the first day of December of each year, until all investment earnings are paid and the total capital invested is returned.

(f) As a condition precedent to the transfer and investment of moneys by the investment management board pursuant to subsection (b) of this section, either the
investment management board or the regional jail and
correctional authority shall have first caused a judicial
determination to be made by an appropriate action
initiated in the West Virginia supreme court of appeals
regarding the transfer of moneys by the investment
management board to the regional jail and correctional
facility authority as an investment from funds available for
investment from the public employees retirement system,
and to otherwise determine the constitutionality of the
provisions of Enrolled House Bill 4702, as enacted by the
Legislature in the year one thousand nine hundred
ninety-eight. This judicial determination shall be brought
as soon as practicable, but not later than thirty days
following the effective date of the amendments to this
section made by the Legislature in the year one thousand
nine hundred ninety-eight.

(g) The Legislature recognizes the fiduciary liability
and responsibility imposed on the board by this article
and by article six, chapter forty-four of this code. The
board, its trustees and employees, have no liability, either
personally or corporately with respect to the investment
provided for in this section and the loans made under
section nineteen of this article, if the investment and loans
are made in accordance with the respective provisions of
this section and section nineteen of this article.

(h) The regional jail and correctional facility authority
shall expend the funds invested under the provisions of
this section to proceed with the projects identified
pursuant to subsection (b) of this section.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-la. Legislative findings and purposes.

(a) The Legislature finds as follows:

(1) That some existing jails, adult correctional facilities
and juvenile detention and correctional facilities in this
state serve neither the best interests of the incarcerated
populations of the jails and facilities nor the citizens of West Virginia;

(2) That due to time constraints established and imposed by judicial decisions, it is imperative that the Legislature give immediate and diligent attention to the improvement of existing facilities and the construction and maintenance of new facilities, as well as to the development and implementation of new, innovative and effective programs dealing with incarcerated persons;

(3) That the physical condition of some existing jails, adult correctional facilities and juvenile facilities contribute to a frustration of efforts to provide rehabilitation, education, vocational training, and social and psychological adjustment and improvement for incarcerated persons, with the result that those existing facilities are utilized largely for the limited purposes of confinement;

(4) That there is a need to examine, understand and implement various new and innovative trends which are being advanced in the area of correctional institution design, and to explore the developing alternatives to incarceration which are being experimented with in other jurisdictions; and

(5) That the revenues of this state, insofar as they are currently used to maintain a traditional penal system, are not efficiently utilized to provide facilities or produce programs which could direct an adult or juvenile inmate's or detainee's time and effort to prepare him or her for life outside of confinement; nor do the revenues provide corrections officials with the resources necessary to address the issues and problems with which they are confronted.

(b) The purposes of this article are as follows:

(1) To provide a cost-efficient system within this state for the construction, maintenance and operation of adult jails and correctional facilities;

(2) To develop and implement plans for the renovation and improvement of existing facilities and the
(3) To provide an environment in which new and innovative corrections programs may be considered and undertaken, and in which opportunities may be offered to incarcerated persons to overcome personal deficiencies which are educational, vocational, social or psychological in nature; and

(4) To investigate the feasibility of individualizing and classifying adult inmates according to their psychological and physical conditions at the time they are incarcerated, and the feasibility of designing for each such incarcerated person a plan for self-improvement and rehabilitation.

§31-20-2. Definitions.

Unless the context indicates clearly otherwise, as used in this article:

(a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained on property owned or controlled by the regional jail authority and designed for the short term pre-adjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility and for juveniles who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code.

(b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia regional jail and correctional facility authority created by this article.

(c) "Board" means the governing body of the authority.

(d) "Bonds" means bonds of the authority issued under this article.

(e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile facility" means the cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during
construction and for a period not exceeding six months
following the completion of construction, equipment,
engineering and legal services, plans, specifications and
surveys, estimates of costs and other expenses necessary or
incidental to determining the feasibility or practicability of
any project, together with any other expenses as may be
necessary or incidental to the financing and the
construction or renovation of the facilities and the placing
of the facilities in operation.

(f) "County" means any county of this state.

(g) "Federal agency" means the United States of
America and any department, corporation, agency or
instrumentality created, designated or established by the
United States of America.

(h) "Fund" means the regional jail and correctional
facility development fund provided in section ten of this
article, including those accounts that may be established
by the authority for accurate accounting of the
expenditure of public funds by that agency.

(i) "Government" means state and federal
government, and any political subdivision, agency or
instrumentality of the state or federal government,
corporate or otherwise.

(j) "Inmate" means any adult person properly
committed to a local or regional jail facility or a
rectional facility.

(k) "Local jail facility" means any county facility for
the confinement, custody, supervision or control of adult
persons convicted of misdemeanors, awaiting trial or
awaiting transportation to a state correctional facility.

(l) "Municipality" means any city, town or village in
this state.

(m) "Notes" means any notes as defined in section
one hundred four, article three, chapter forty-six of this
code issued under this article by the authority.

(n) "Correctional facility" means any correctional
facility, penitentiary or other correctional institution
operated by the division of corrections for the incarceration of adults.

(o) "Regional jail facility" or "regional jail" means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision or control of adult persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(p) "Regional jail commission" means the commission established in section eight of this article.

(q) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions and all other income received by the authority.

(r) "Security interest" means an interest in the loan portfolio of the authority which is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(s) "Work farm" has the same meaning as that term is used in section twelve, article eight, chapter seven of this code authorizing work farms for individual counties.

(t) "Juvenile detention facility" or "juvenile detention center" means a facility operated by the division of juvenile services for the short term pre-adjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility and for juveniles who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code.

(u) "Juvenile correctional facility" means a facility operated by the division of juvenile services for the post-dispositional confinement of juveniles adjudicated of offenses that would be criminal offenses if committed by an adult.
§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.

There is hereby created the West Virginia regional jail and correctional facility authority which shall be a body corporate and a government instrumentality. The authority shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by the West Virginia regional jail and prison authority. The West Virginia regional jail and prison authority is hereby abolished. Wherever in this chapter and elsewhere in law reference is made to the West Virginia regional jail and prison authority, such reference shall henceforth be construed and understood to mean the West Virginia regional jail and correctional facility authority.

The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the commissioner of the division of corrections; the director of the division of juvenile services; the secretary of the department of military affairs and public safety; the secretary of the department of administration, or his or her designated representative; three county officials appointed by the governor, no more than two of which may be of the same political party; and two citizens appointed by the governor to represent the areas of law and medicine. The commissioner of the division of corrections and the director of the division of juvenile services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority. Members of the Legislature are not eligible to serve on the board.

The governor shall nominate and, by and with the advice and consent of the Senate, appoint the five appointed members of the authority for staggered terms of four years beginning the first day of July, one thousand nine hundred eighty-nine. Of the members of the board first appointed, one shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred
ninety-one, two shall be appointed for terms ending the
thirtieth day of June, one thousand nine hundred
ninety-two, and two shall be appointed for terms ending
the thirtieth day of June, one thousand nine hundred
ninety-three. As these original appointments expire, each
subsequent appointment shall be for a full four-year term.

Any appointed member whose term has expired shall
serve until his successor has been duly appointed and
qualified. Any person appointed to fill a vacancy shall
serve only for the unexpired term. Any appointed
member is eligible for reappointment. Members of the
authority are not entitled to compensation for services
performed as members but are entitled to reimbursement
for all reasonable and necessary expenses actually
incurred in the performance of their duties.

All members of the board of the authority shall
execute an official bond in a penalty of ten thousand
dollars, conditioned as required by law. Premiums on
such bond shall be paid from funds accruing to the
authority. Such bond shall be approved as to form by the
attorney general and as to sufficiency by the governor
and, when fully executed and approved, shall be filed in
the office of the secretary of state.

§31-20-4. Governing body; organization and meetings;
quorum; administrative expenses.

The governing body of the authority shall consist of
the voting members of the board as provided for in
section three of this article and shall exercise all the
powers given to the authority in this article. On the
second Monday of July of each odd-numbered year, the
board shall meet to elect a chairman and a secretary from
among its own members. The secretary of the department
of administration or his or her designated representative
shall serve as treasurer of the board. The board shall
otherwise meet quarterly, unless a special meeting is called
by its chairman.

A majority of the members of the board constitute a
quorum, and a quorum must be present for the board to
conduct business. Unless the bylaws require a larger
number, action may be taken by majority vote of the members present.

The board shall prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

The governor shall, with the advice and consent of the Senate, appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the governor. The executive director is empowered to employ any other personnel he or she determines necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director is further empowered to engage in negotiations and carry out plans to implement the provisions of this article and to exercise those powers listed in section five of this article on behalf of the authority. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

All costs incidental to the administration of the authority, including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.

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

Public hearings pursuant to this section shall be held by the authority in convenient locations for public comment on the establishment of regional jails. The authority shall cause to be published at least two weeks in advance of a hearing a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof. The publication area shall be each county which may be included in a region for the
purposes of a regional jail with the county in which the public hearing is held.

In addition to the hearing requirements above, before beginning construction of a new facility for use as a regional jail or correctional facility or before beginning renovation or acquisition of an existing facility for use as a regional jail facility, which existing facility is not already a jail, correctional facility or secure facility for the detention of juveniles or persons otherwise involuntarily committed or confined, the authority shall hold a hearing for comment by all members of the public on all aspects relating to the advisability of the use of the site for that regional jail facility. The authority shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code for the requirements for notice and other procedures of said public hearings, which requirements shall be as similar as practicable to those hearings conducted regarding the construction of bridges by the West Virginia department of highways.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

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

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

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

(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation at public or private hearings, on any matter relevant to this article and necessary for information on the construction or renovation of any adult correctional facility or juvenile facility or the establishment of any correctional facility industries project.

(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant
(f) To apply to the circuit court having venue of the
to any hearing before the authority or one or more
members appointed by it to conduct any hearing.

offense to have punished for contempt any witness who
refuses to obey a subpoena, refuses to be sworn or
affirmed, or refuses to testify, or who commits any
contempt after being summoned to appear.

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

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

(i) To make rules for the management and regulation
of its affairs pursuant to article three, chapter
twenty-nine-a of this code.

(j) To appoint officers, agents and employees.

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

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

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

(n) To sell, at public or private sale, any bond or other
negotiable instrument, security interest or obligation of the
authority in a manner and upon terms that the authority considers would best serve the purposes of this article.

(o) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(1) The payment, funding or refunding of the principal of, interest on or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

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

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

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

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

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

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

(u) To propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law.

(v) To assume the responsibility for operation and management of regional jail facilities under the jurisdiction of the state regional jail and correctional facility authority. The authority shall provide for the transportation of inmates between the regional jails and local holding facilities for court appearances.

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

(x) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, repair and replace juvenile detention facilities and juvenile correctional facilities.
(y) To cooperate with the commission for distribution of surplus foods and to authorize the executive director to exercise all power and authority provided in this section necessary to implement the pilot program for delivery of leftover prepared foods at the regional jail located in Marshall County, pursuant to section seventeen, article two, chapter eighteen of this code.

§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.

(a) The regional jail and correctional facility authority shall complete a comprehensive study of all existing juvenile detention facilities in the state of West Virginia no later than the first day of October, one thousand nine hundred ninety-eight. During the conduct of this study, all state agencies shall provide the authority with any relevant information and materials that the authority requests. This study shall include an assessment of the physical conditions of confinement within the existing juvenile detention facilities and the relative need for facilities of that type, taking into account the broad range of alternatives that are available for juveniles who are in the custody of the division of juvenile services.

(b) After completing this study, the authority shall submit a report to the governor proposing a plan for the establishment of regional juvenile detention facilities.

(c) The authority shall consider, but is not limited to, the following when in developing the regional juvenile detention facilities plan:

(1) All federal statutes and mandates concerning the location, construction, operation, administration and staffing of juvenile detention facilities;

(2) The relative physical condition of the juvenile detention facilities located within the state;

(3) The transportation costs associated with the establishment of centralized and regional juvenile detention facilities, including, but not limited to, the costs of transporting detained juveniles to court appearances and for other necessary absences from the facility;
(4) The availability of medical services and educational and recreational opportunities;

(5) Information received from public hearings;

(6) The relative savings in cost and efficiency of providing regional juvenile detention services at facilities located adjacent to existing regional jail facilities, including moneys saved by the sharing of certain staff and services, including food services, to the extent that such sharing of resources is permitted by federal law and guidelines;

(7) Available facilities located adjacent to existing regional jails which may be used as regional juvenile detention facilities, including, but not limited to, existing county and state owned properties: Provided, That if the authority determines that an existing facility meets applicable standards, including all federal standards, or could reasonably be made to meet the standards for a regional juvenile detention facility, the authority may proceed to acquire that existing facility and compensate the owner thereof in an amount that may not exceed fair market value.

§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.

(a) A jail facilities standards commission of twelve members is hereby created. The superintendent of the state police or his or her designee shall serve as chairperson of the commission and is eligible to vote on matters before the commission. The governor shall appoint two county sheriffs, to be chosen from a list of three names provided by the president of the West Virginia sheriffs’ association, three county commissioners, to be chosen from a list of five names provided by the president of the West Virginia county commissioners’ association, and one chief of police, to be chosen from a list of three names provided by the president of the West Virginia police chiefs’ association. Each of the appointed members shall serve for a term of three years, is eligible for reappointment and may vote on matters before the commission. The executive director of the regional
(a) A juvenile facilities standards commission consisting of nine members is hereby created. The governor shall appoint two citizen members who are experienced and knowledgeable in the field of law enforcement; one citizen member who is experienced and knowledgeable in the field of juvenile development; and one lay member. Each of these appointed members shall serve for a term of three years and be eligible for reappointment. The secretary of the department of military affairs and public safety shall be a member ex officio and shall serve as the commission's chairman. The state fire marshal and the chairman of the juvenile justice subcommittee of the governor's committee on crime, delinquency and correction shall be members ex officio. The director of the division of juvenile services and the executive director of the regional jail and correctional facility authority shall be members ex officio but shall serve in an advisory capacity and are not entitled to vote on matters coming before the commission.

(b) Members of the commission shall serve without compensation, but may be reimbursed by the division of
juvenile services for reasonable and necessary expenses incurred in the performance of their duties. The division of juvenile services shall provide the commission with secretarial and other necessary services.

(c) A vacancy among the appointed members of the commission shall be filled, within thirty days, in the same manner as the original appointment. A quorum consists of four of the seven voting members.


(a) The purpose of the jail facilities standards commission is to assure that proper minimum standards and procedures are developed for jail facility operation, maintenance and management of inmates for regional jails and local jail facilities used as temporary holding facilities. In order to accomplish this purpose, the commission shall:

(1) Prescribe standards for the maintenance and operation of county and regional jails. The standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; classification; inmate rules and discipline; inmate money and property; religious services; inmate work programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation: Provided, That the standards developed for the construction, operation and maintenance of jails apply only to jail facilities completed after the fifth day of April, one thousand nine hundred eighty-eight, and that the standards serve only as guidelines for any jail facility in operation prior to that date: Provided, however, That the commission shall establish standards and procedures permitting and implementing in those facilities the double bunking of
inmates in all appropriate cases to the extent that this
practice does not violate federal law;

(2) Propose legislative rules for promulgation
pursuant to the provisions of article three, chapter
twenty-nine-a of this code that are necessary to implement
the provisions of this article relating to jail facilities,
including, without limitation, minimum jail and work farm
standards which shall be proposed for promulgation on or
before the first day of July, one thousand nine hundred
ninety-nine: Provided, That rules filed by the jail and
correctional facilities standards commission and
authorized by the Legislature to be promulgated before
the amendment to this section enacted in the regular
session of the Legislature in the year one thousand nine
hundred ninety-eight remain in force except that such
previously promulgated rules no longer apply to: (i)
Correctional facilities; and (ii) jail facilities that were
originally constructed for use as a jail which were
completed and placed in operation before the fifth day of
April, one thousand nine hundred ninety-eight: Provided,
however, That such previously promulgated rules shall
serve as guidelines for those facilities that fall within the
specifications of (ii) herein;

(3) Develop a process for reviewing and updating the
jail and work farm standards pursuant to the provisions of
article three, chapter twenty-nine-a of this code as
necessary to assure that they conform to current law; and

(4) Report periodically to the regional jail and
correctional facility authority and the appropriate county
and municipal authorities to advise, recommend, and
direct actions to be taken by the authority, the county or
the municipality to implement proper minimum jail and
work farm standards.

(b) Notwithstanding any other provision of this code
to the contrary, any county commission providing and
maintaining a jail on the effective date of this article may
not be required to provide and maintain a jail after a
regional jail becomes available pursuant to the provisions
of article twenty, chapter thirty-one of this code, unless the
county commission determines that a facility is necessary:
Provided, That the county commission may provide and maintain a holding facility which complies with the standards set forth for holding facilities in legislative rules promulgated by the jail facilities standards commission or its predecessor, the jail and correctional facilities standards commission.

§31-20-9a. Juvenile facilities standards commission: purpose; powers; and duties.

The purpose of the commission is to assure that proper minimum standards and procedures are developed for juvenile detention and juvenile correctional facility operation, maintenance and management. To this end, the commission shall:

1. Develop standards for the maintenance and operation of juvenile detention and correctional facilities. These standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; rules and discipline; religious services; vocational programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation.

2. Propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code, including, without limitation, the minimum standards for juvenile detention and correctional facilities as provided in subdivision (1) of this section not later than the first day of January, one thousand nine hundred ninety-nine.

3. Develop a process for reviewing and updating these standards as necessary to assure that they conform to current law.
(4) Report periodically to the authority to advise and recommend actions to be taken by the authority, if necessary, to implement proper standards in the state’s juvenile detention and correctional facilities.

§31-20-10. Regional jail and correctional facility development fund.

(a) The regional jail and correctional facility development fund is hereby created and shall be composed of special accounts in the state treasury. The fund shall operate as a revolving fund whereby all appropriations and payments to the fund may be applied and reapplied by the authority for the purposes of this article. Separate accounts may be established within the fund for the purpose of identification of various revenue resources and payment of specific obligations. These separate accounts may be used for purposes that include, but are not limited to, the construction, renovation or repair of specific facilities, cash control, facility maintenance and for the individual operating accounts of facilities operated by the authority. The authority may create other separate accounts within the fund that it determines are necessary for the efficient operation of the authority.

(b) Revenues deposited into the fund shall be used to make payments of interest and shall be pledged as security for bonds, security interests or notes issued or lease-purchase obligations entered into with another state entity by the authority pursuant to this article.

(c) Whenever the authority determines that the balance in the fund is in excess of the immediate requirements of this article, it may request that the excess be invested until needed. In this case the excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

(d) If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it shall take any action that is
necessary to release the excess and transfer it to the
general revenue fund of the state treasury.

(e) The fund shall consist of the following:

(1) Amounts raised by the authority by the sale of
bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state
treasury which are specifically designated by acts of the
Legislature for inclusion into the fund;

(3) Contributions, grants and gifts from any source,
both public and private, which may be used by the
authority for any project or projects;

(4) All sums paid by the counties pursuant to
subsection (h) of this section; and

(5) All interest earned on investments made by the
state from moneys deposited in this fund.

(f) The amounts deposited in the fund shall be
accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other
borrowing authorized by this article shall be deposited in a
separate account within the fund and expended for the
purpose of construction, renovation and repair of
correctional facilities, regional jails and juvenile detention
and correctional facilities for which need has been
determined by the authority;

(2) Amounts deposited from all other sources shall be
pledged first to the debt service on any bonded
indebtedness, including lease-purchase obligations entered
into by the authority with another state entity or other
obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been
satisfied, the authority shall requisition from the fund the
amounts that are necessary to provide for payment of the
administrative expenses of this article;

(4) The authority shall requisition from the fund after
any requirements of debt service have been satisfied the
amounts that are necessary for the maintenance and operation of the correctional facilities or regional jails or both that are constructed pursuant to the provisions of this article and shall expend those amounts for that purpose. The fund shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in the fund and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from those sources shall be in proportion to the percentage the amount contributed to the fund by the counties in each region bears to the total amount received by the fund from those sources;

(5) Notwithstanding any other provisions of this article, sums paid into the fund by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from the fund to pay for costs incurred at the regional jail facility at which each inmate was incarcerated; and

(6) Any amounts deposited in the fund from other sources permitted by this article shall be expended in the respective regions based on particular needs to be determined by the authority.

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility development fund a cost per day for each incarcerated inmate to be determined by the regional jail and
correctional facility authority according to criteria and by
procedures established by legislative rules proposed for
promulgation pursuant to article three, chapter
twenty-nine-a of this code to cover the costs of operating
the regional jail facilities of this state to maintain each
inmate. The per diem costs for incarcerating inmates may
not include the cost of construction, acquisition or
renovation of the regional jail facilities: Provided, That
each regional jail facility operating in this state shall keep
a record of the date and time that an inmate is
incarcerated, and a county may not be charged for a
second day of incarceration for an individual inmate until
that inmate has remained incarcerated for more than
twenty-four hours. Thereafter, in cases of continuous
incarceration, subsequent per diem charges shall be made
upon a county only as subsequent intervals of twenty-four
hours pass from the original time of incarceration.

§31-20-26. Legislative oversight committee.

The president of the Senate and the speaker of the
House of Delegates shall each designate five members of
their respective houses, at least one of whom shall be a
member of the minority party, to serve on a legislative
oversight committee charged with immediate and ongoing
oversight of the authority and the commissions, and
functions and duties of the authority and the commissions
created by this article. This committee shall report
regularly at each legislative session on the implementation
of the purposes set forth in section one-a of this article. It
shall regularly investigate all matters relating to integrity,
probity and foresight in funding, operating and planning
the correctional system on state, regional and county
levels, and may include the planning, funding,
constructing and operating of juvenile detention and
correctional facilities. Specifically, the committee shall
study and make recommendations to the Legislature as to
the revision of the system of classifying adult inmates, with
a view variously to decreasing the prison population
confined in “maximum security” facilities and to
designating and meeting the needs of inmates classified as
elderly, disabled or otherwise handicapped. In addition,
the committee may study and make recommendations to
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24 the Legislature relating to the system of juvenile detention
25 and juvenile corrections.
26
27 The committee shall further study and inform the state
28 judiciary of the impact of sentencing on the composition
29 of the prison population in proportion to the use of
30 facilities. It shall recommend alternatives to long-term
31 sentencing, and shall recommend measures to improve the
32 quality of correctional staff and facilitate
33 nonconfrontational contacts with inmates. The committee
34 shall investigate means to structure inmates' time to ensure
35 genuine and willing reaccommodations to societal norms;
36 shall probe and coordinate all available means for funding
37 state, regional and county correctional facilities; and shall
38 contract with penal experts to study these issues in
39 appropriate depth and perspective. Annually, to predict a
40 prudent use of available funds, the committee shall study
41 the profile of the inmate population with regard to its age
42 and social background and needs.
43
44 The committee shall recommend to the Legislature the
45 funding required to execute these functions. It shall meet
46 regularly with the governing body of the authority
47 established in this article to determine what may be
48 required for full and timely compliance with all federal
49 mandates and court-ordered changes in the correctional
50 system and shall recommend funding for these changes.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

(a) Every insurer transacting insurance in West
1 Virginia shall file with the commissioner, on or before the
2 first day of March, each year, a financial statement made
3 under oath of its president or secretary and on a form
4 prescribed by the commissioner. The insurer shall also,
5 on or before the first day of March of each year subject to
6 the provisions of section fourteen-c of this article, under
7 the oath of its president or secretary, make a premium tax
return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during such calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the gross direct premiums, including dividends, by whatever name called, on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policies, and also includes any additional tax due under section fourteen-a of this section. All taxes received by the commissioner shall be paid into the insurance tax fund created in subsection (b) of this section.

(b) There is created a special revenue fund in the state treasury which is designated the “insurance tax fund.” This fund is not part of the general revenue fund of the state. It consists of all amounts deposited in the fund pursuant to subsection (a) of this section, sections fifteen and seventeen of this article, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. The treasurer shall administer the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may
not exceed twenty million dollars in any fiscal year. In
the event there are insufficient funds available in any
month to transfer the amount required pursuant to this
subsection to the regional jail and correctional facility
investment fund, the deficiency shall be added to the
amount transferred in the next succeeding month in which
revenues are available to transfer the deficiency. Each
month a lien on the revenues generated from the
insurance premium tax, the annuity tax and the minimum
tax, provided in this section and sections fifteen and
seventeen of this article, up to a maximum amount equal
to one twelfth of the projected annual principal and return
is granted to the investment management board to secure
the investment made with the regional jail and correctional
facility authority pursuant to section twenty, article six,
chapter twelve of this code. The treasurer shall, no later
than the last business day of each month, transfer amounts
the treasurer determines are not necessary for making
refunds under this article to meet the requirements of
subsection (d), section twenty, article six, chapter twelve of
this code, to the credit of the general revenue fund.

(d) The amendment to this section enacted during the
regular session of the Legislature in the year one thousand
nine hundred ninety-eight is effective on the first day of
July, one thousand nine hundred ninety-eight.

§33-3-15. Annuity tax.

(a) Every life insurer transacting insurance in West
Virginia shall make a return to the commissioner annually
on a form prescribed by the commissioner, on or before
the first day of March, under the oath of its president or
secretary, of the gross amount of annuity considerations
collected and received by it during the previous calendar
year on business transacted in this state and stating the
amount of tax due under this section, together with
payment in full for the tax due. The tax is the sum equal
to one per centum of the gross amount of the annuity
considerations, less annuity considerations returned and
less termination allowances on group annuity contracts.
All the taxes received by the commissioner shall be paid
into the insurance tax fund created in subsection (b), section fourteen of this article.

(b) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.

§33-3-17. Minimum tax payable.

(a) The minimum amount of tax payable by any insurer licensed in the state of West Virginia when considering the aggregate payments due from all of the taxes imposed by this article is two hundred dollars for any calendar year. This minimum tax is payable annually on or before the first day of March and shall be calculated on a form prescribed by the commissioner. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of this minimum tax. All moneys received by the commissioner from this minimum tax shall be paid into the insurance tax fund created in subsection (b), section fourteen of this article.

(b) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 26th day of April, 1998.

Governor