WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 538

(By Senator: Tomblin, Mr. President, and Spruance)

PASSED March 11, 2006

In Effect July 1, 2006 Passage
AN ACT to amend and reenact §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §9A-1-5 of said code; to amend and reenact §15-2-2 of said code; to amend and reenact §16-5P-5 of said code; to amend and reenact §17-2A-3 of said code; to amend and reenact §18-3-1 of said code; to amend and reenact §19-1A-5 of said code; to amend and reenact §20-1-5 of said code; to amend and reenact §21-1-2 of said code; to amend and reenact §21A-4-5 of said code; to amend and reenact §22-1-6 of said code; to amend and reenact §29-1-1 of said code; to amend and reenact §29-12-5 of said code; to amend and reenact §33-2-2 of said code; and to amend and reenact §60-2-9 of said code, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:
That §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §9A-1-5 of said code be amended and reenacted; that §15-2-2 of said code be amended and reenacted; that §16-5P-5 of said code be amended and reenacted; that §17-2A-3 of said code be amended and reenacted; that §18-3-1 of said code be amended and reenacted; that §19-1A-5 of said code be amended and reenacted; that §20-1-5 of said code be amended and reenacted; that §21-1-2 of said code be amended and reenacted; that §21A-4-5 of said code be amended and reenacted; that §22-1-6 of said code be amended and reenacted; that §29-1-1 of said code be amended and reenacted; that §29-12-5 of said code be amended and reenacted; that §33-2-2 of said code be amended and reenacted; and that §60-2-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

1 (a) Beginning in the calendar year two thousand five, and for each calendar year after that, salaries for each of the state constitutional officers are as follows:

4 (1) The salary of the Governor is ninety-five thousand dollars per year;

6 (2) The salary of the Attorney General is eighty thousand dollars per year;

8 (3) The salary of the Auditor is seventy-five thousand dollars per year;

10 (4) The salary of the Secretary of State is seventy thousand dollars per year;

12 (5) The salary of the Commissioner of Agriculture is seventy-five thousand dollars per year; and
The salary of the State Treasurer is seventy-five thousand dollars per year.

(b) Notwithstanding the provisions of subsection (a) of this section, beginning in the calendar year two thousand nine, and for each calendar year thereafter, salaries for each of the state constitutional officers shall be as follows:

(1) The salary of the Governor shall be one hundred fifty thousand dollars per year;

(2) The salary of the Attorney General shall be ninety-five thousand dollars per year;

(3) The salary of the Auditor shall be ninety-five thousand dollars per year;

(4) The salary of the Secretary of State shall be ninety-five thousand dollars per year;

(5) The salary of the Commissioner of Agriculture shall be ninety-five thousand dollars per year; and

(6) The salary of the State Treasurer shall be ninety-five thousand dollars per year.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has 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 virtue of existing law respecting each office.
Prior to the first day of July, two thousand six, each such
named appointive state officer shall continue to receive
the annual salaries they were receiving as of the effective
date of the enactment of this section in two thousand six,
and thereafter, notwithstanding any other provision of this
code to the contrary, the annual salary of each named
appointive state officer shall be as follows:

Commissioner, Division of Highways, ninety-two
thousand five hundred dollars; Commissioner, Division of
Corrections, eighty thousand dollars; Director, Division of
Natural Resources, seventy-five thousand dollars; Super-
intendent, State Police, eighty-five thousand dollars;
Commissioner, Division of Banking, seventy-five thousand
dollars; Commissioner, Division of Culture and History,
sixty-five thousand dollars; Commissioner, Alcohol
Beverage Control Commission, seventy-five thousand
dollars; Commissioner, Division of Motor Vehicles,
seventy-five thousand dollars; Director, Division of
Personnel, seventy thousand dollars; Chairman, Health
Care Authority, eighty thousand dollars; members, Health
Care Authority, seventy thousand dollars; Director,
Human Rights Commission, fifty-five thousand dollars;
Commissioner, Division of Labor, seventy thousand
dollars; Director, Division of Veterans' Affairs, sixty-five
thousand dollars; Chairperson, Board of Parole, fifty-five
thousand dollars; members, Board of Parole, fifty thou-
sand dollars; members, Employment Security Review
Board, seventeen thousand dollars; and Commissioner,
Bureau of Employment Programs, seventy-five thousand
dollars. Secretaries of the departments shall be paid an
annual salary as follows: Health and Human Resources,
ninety-five thousand dollars; Transportation, ninety-five
thousand dollars; Revenue, ninety-five thousand dollars;
Military Affairs and Public Safety, ninety-five thousand
dollars; Administration, ninety-five thousand dollars;
Education and the Arts, ninety-five thousand dollars;
Commerce, ninety-five thousand dollars; and Environmen-
tal Protection, ninety-five thousand dollars: Provided,
That any increase in the salary of any current appointive state officer named in this subsection pursuant to the reenactment of this subsection during the regular session of the Legislature in two thousand six that exceeds five thousand dollars shall be paid to such officer or his or her successor beginning on the first day of July, two thousand six, in annual increments of five thousand dollars per fiscal year, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and, prior to the first day of July, two thousand six, each of the state officers named in this subsection shall continue to receive the annual salaries he or she was receiving as of the effective date of the enactment of this section in two thousand six and shall thereafter, notwithstanding any other provision of this code to the contrary, be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, eighty thousand dollars; Director, Division of Rehabilitation Services, seventy thousand dollars; Executive Director, Educational Broadcasting Authority, seventy-five thousand dollars; Secretary, Library Commission, seventy-two thousand dollars; Director, Geological and Economic Survey, seventy-five thousand dollars; Executive Director, Prosecuting Attorneys Institute, seventy thousand dollars; Executive Director, Public Defender Services, seventy thousand dollars; Commissioner, Bureau of Senior Services, seventy-five thousand dollars; Director, State Rail Authority, sixty-five thousand dollars; Executive Director, Women's Commission, forty-five thousand dollars; Director, Hospital Finance Authority, thirty-five thousand dollars; member, racing commission, twelve thousand dollars; chairman, Public Service Commission, eighty-five thousand dollars; members, Public Service Commission, eighty-five thousand dollars; Director, Division of Forestry, seventy-five thousand dollars; Director, Division of
Juvenile Services, eighty thousand dollars; and Executive Director, Regional Jail Authority, eighty thousand dollars:

Provided, That any increase in the salary of any current appointive state officer named in this subsection pursuant to the reenactment of this subsection during the regular session of the Legislature in two thousand six that exceeds five thousand dollars shall be paid to such officer or his or her successor beginning on the first day of July, two thousand six, in annual increments of five thousand dollars per fiscal year, up to the maximum salary provided in this subsection.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has 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 virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, ninety-two thousand five hundred dollars; Commissioner, Insurance Commission, ninety-two thousand five hundred dollars; Director, Lottery Commission, ninety-two thousand five hundred dollars; Director, Division of Homeland Security and
Emergency Management, sixty-five thousand dollars; and
Adjutant General, ninety-two thousand five hundred dollars;

(d) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to Veterans' Council members; traveling expenses; meetings of Veterans' Council.

The director shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and necessary traveling expenses incident to the performance of his or her duties. The salaries of the veterans' affairs officers, assistants and employees shall be fixed by the Veterans' Council. The members of the Veterans' Council shall receive no salary, but each member shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. The requisition for such expenses and traveling expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the Auditor and permanently preserved as a public record. The Veterans' Council shall hold its initial meeting on the call of the Governor, and thereafter
shall meet on the call of its chairman, except as otherwise provided. With the exception of the first three meetings of the Veterans' Council, none of which shall be of a duration longer than two weeks each, for organizational purposes, the Veterans' Council shall meet not more than once every two months at such times as may be determined by and upon the call of the chairman for a period of not more than two days, unless there should be an emergency requiring a special meeting or for a longer period and so declared and called by the Governor or by the chairman with the approval of the Governor. A majority of the members of the Veterans' Council shall constitute a quorum for the conduct of official business.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the State Police.

The Department of Public Safety, heretofore established, shall be continued and hereafter shall be known as the West Virginia State Police. Wherever the words “Department of Public Safety” or “Division of Public Safety” appear in this code, they shall mean the West Virginia State Police. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. The superintendent shall be paid an annual salary as provided in section two-a, article seven, chapter six of this code. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a bond in the penalty of ten thousand dollars, payable to the State of West Virginia and conditioned upon the faithful performance of his or her duties. Such
bond both as to form and security shall be approved as to
form by the Attorney General and to sufficiency by the
Governor.

Before entering upon the duties of his or her office, the
superintendent shall subscribe to the oath hereinafter
provided. The headquarters of the department shall be
located in Kanawha County.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5P. SENIOR SERVICES.

§16-5P-5. Compensation; traveling expenses.

The Commissioner of the Bureau of Senior Services shall
receive an annual salary as provided in section two-a,
article seven, chapter six of this code and the necessary
traveling expenses incident to the performance of his or
her duties. Requisition for traveling expenses shall be
accompanied by a sworn itemized statement which shall
be filed with the Auditor and preserved as a public record.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


The commissioner shall receive an annual salary as
provided in section two-a, article seven, chapter six of this
code. He or she shall be allowed and paid necessary
traveling expenses incident to the performance of his or
her duties. Statements covering such expenses shall be
itemized and verified by the commissioner.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling
expenses; office and residence; evaluation.
There shall be appointed by the state board a State Superintendent of Schools who shall serve at the will and pleasure of the state board. He or she shall be a person of good moral character, of recognized ability as a school administrator, holding at least a master's degree in educational administration, and shall have had not less than five years of experience in public school work. He or she shall receive an annual salary set by the state board, to be paid monthly: Provided, That the annual salary may not exceed one hundred forty-six thousand one hundred dollars: Provided, however, That after the thirtieth day of June, two thousand six, the annual salary may not exceed one hundred seventy-five thousand dollars. The state superintendent also shall receive necessary traveling expenses incident to the performance of his or her duties to be paid out of the General School Fund upon warrants of the State Auditor. The state superintendent shall have his or her office at the State Capitol. The state board shall report to the Legislative Oversight Commission on Education Accountability upon request concerning its progress during any hiring process for a state superintendent.

The state board annually shall evaluate the performance of the state superintendent and publicly announce the results of the evaluation.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of Division of Forestry; appointment; qualifications.

The Director of the Division of Forestry shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor. The director shall be a graduate of a school of forestry accredited by the Society of American Foresters and have a minimum of ten years' experience in forest management. The director shall be paid an
11 annual salary as provided in section two-a, article seven,
9 chapter six of this code: Provided, That the director's
10 salary shall be paid solely from budget appropriations to
11 the division.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

1 The director shall receive an annual salary as provided
2 in section two-a, article seven, chapter six of this code,
3 payable in equal monthly installments and shall be
4 allowed and paid necessary expenses incident to the
5 performance of his or her official duties. Prior to the
6 assumption of the duties of his or her office, he or she shall
7 take and subscribe to the oath required of public officers
8 by the Constitution of West Virginia and shall execute a
9 bond, with surety approved by the Governor, in the penal
10 sum of ten thousand dollars, which executed oath and
11 bond shall be filed in the office of the Secretary of State.
12 Premiums on the bond shall be paid from division funds.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.

1 The state Commissioner of Labor shall be appointed by
2 the Governor, by and with the advice and consent of the
3 Senate. He or she shall be a competent person, who is
4 identified with the labor interests of the state. The
5 Commissioner of Labor in office on the effective date of
6 this section shall, unless sooner removed, continue to serve
7 until his or her term expires and his or her successor has
8 been appointed and has qualified. On or before the first
9 day of April, one thousand nine hundred forty-one, and on
10 or before the first day of April of each fourth year thereaf-
11 ter, the Governor shall appoint a Commissioner of Labor
to serve for a term of four years, commencing on said first
day of April. The commissioner shall receive an annual
salary as provided in section two-a, article seven, chapter
six of this code.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 4. BOARD OF REVIEW.

§21A-4-5. Compensation and travel expenses.

Each member of the board shall receive an annual
salary as provided in section two-a, article seven, chapter
six of this code and the necessary traveling expenses
incurred in the performance of his or her duties.

Requisition for traveling expenses shall be accompanied
by a sworn and itemized statement which shall be filed
with the Auditor and preserved as a public record.

The salaries and expenses of the members shall be paid
from the administration fund.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protec-
tion.

(a) The secretary is the chief executive officer of the
division. Subject to section seven of this article and other
provisions of law, the secretary shall organize the depart-
ment into such offices, sections, agencies and other units
of activity as may be found by the secretary to be desirable
for the orderly, efficient and economical administration of
the department and for the accomplishment of its objects
and purposes. The secretary may appoint a deputy
secretary, chief of staff, assistants, hearing officers, clerks,
stenographers and other officers, technical personnel and
employees needed for the operation of the department and
may prescribe their powers and duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments and other instrumentalities of this state; and

(2) That appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the secretary by this chapter, the secretary is hereby authorized and empowered to:
(1) Sign and execute in the name of the state by the "Department of Environmental Protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "Department of Environmental Protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Department of Environmental Protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The
secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the secretary;

(6) Issue certifications required under 33 U. S. C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the secretary shall solicit from the Division of Natural Resources reports and comments concerning the possible certification. The Division of Natural Resources shall direct the reports and comments to the secretary for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the Attorney General for legal assistance and representation as provided by law.

(e) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the Governor.

(f) At the time of his or her initial appointment, the secretary must be at least thirty years old and must be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and
wise use of natural resources. The secretary must have at least a bachelor's degree in a related field and at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the secretary will be responsible upon assumption of the office. The secretary may not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as secretary in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The secretary shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and will be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the secretary shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars, which executed oath and bond will be filed in the Office of the Secretary of State. Premiums on the bond will be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued; sections and commissions; purposes; definitions; effective date.

(a) The Division of Culture and History and the office of Commissioner of Culture and History heretofore created are hereby continued. The Governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer
of the division and shall be paid an annual salary as
provided in section two-a, article seven, chapter six of this
code. The commissioner so appointed shall have: (1) A
bachelor's degree in one of the fine arts, social sciences,
library science or a related field; or (2) four years' experi-
ence in the administration of museum management, public
administration, arts, history or a related field.

(b) The division shall consist of five sections as follows:

(1) The arts section;
(2) The archives and history section;
(3) The museums section;
(4) The historic preservation section; and
(5) The administrative section.

(c) The division shall also consist of two citizens com-
missions as follows:

(1) A Commission on the Arts; and
(2) A Commission on Archives and History.

(d) The commissioner shall exercise control and supervi-
sion of the division and shall be responsible for the
projects, programs and actions of each of its sections. The
purpose and duty of the division is to advance, foster and
promote the creative and performing arts and crafts,
including both indoor and outdoor exhibits and perfor-
mances; to advance, foster, promote, identify, register,
aquire, mark and care for historical, prehistorical,
archaeological and significant architectural sites, struc-
tures and objects in the state; to encourage the promotion,
preservation and development of significant sites, struc-
tures and objects through the use of economic development
activities such as loans, subsidies, grants and other
incentives; to coordinate all cultural, historical and artistic
activities in state government and at state-owned facili-
ties; to acquire, preserve and classify books, documents, records and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the culture of the state.

(e) The division shall have jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia Science and Culture Center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided in section fourteen of this article; and any other sites as may be transferred to or acquired by the division. Notwithstanding any provision of this code to the contrary, including the provisions of article one of chapter five-b of this code, beginning on and after the first day of July, one thousand nine hundred ninety-three, the division shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the State Capitol Building at Charleston.

(f) For the purposes of this article, "commissioner" means the Commissioner of Culture and History, and "division" means the Division of Culture and History.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

(a)(1) The board has, without limitation and in its discretion as it seems necessary for the benefit of the insurance program, general supervision and control over the insurance of state property, activities and responsibilities, including:

(A) The acquisition and cancellation of state insurance;

(B) Determination of the kind or kinds of coverage;
(C) Determination of the amount or limits for each kind of coverage;

(D) Determination of the conditions, limitations, exclusions, endorsements, amendments and deductible forms of insurance coverage;

(E) Inspections or examinations relating to insurance coverage of state property, activities and responsibilities;

(F) Reinsurance; and,

(G) Any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of such state property, activities and responsibilities.

(2) The board shall endeavor to secure reasonably broad protection against loss, damage or liability to state property and on account of state activities and responsibilities by proper, adequate, available and affordable insurance coverage and through the introduction and employment of sound and accepted principles of insurance, methods of protection and principles of loss control and risk.

(3) The board is not required to provide insurance for every state property, activity or responsibility.

(4) Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the constitutional immunity of the State of West Virginia against claims or suits: Provided, That nothing herein shall bar a state agency or state instrumentality from relying on the constitutional immunity granted the State of West Virginia against claims or suits arising from or out of any state property, activity or responsibility not covered by a policy or policies of insurance: Provided, however, That nothing herein shall bar the insurer of political subdivisions from relying upon any statutory immunity granted such political subdivisions against claims or suits.
(5) The board shall make a complete survey of all presently owned and subsequently acquired state property subject to insurance coverage by any form of insurance, which survey shall include and reflect inspections, appraisals, exposures, fire hazards, construction and any other objectives or factors affecting or which might affect the insurance protection and coverage required.

(6) The board shall keep itself currently informed on new and continuing state activities and responsibilities within the insurance coverage herein contemplated. The board shall work closely in cooperation with the State Fire Marshal's office in applying the rules of that office insofar as the appropriations and other factors peculiar to state property will permit.

(7) The board may negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to covered state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. Any discussion or consideration of the financial or personal information of an insured may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

(8) The board may employ an executive director and such other employees, including legal counsel, as may be necessary to carry out its duties. The executive director shall receive an annual salary as provided in section two-a, article seven, chapter six of this code. The legal counsel may represent the board before any judicial or administrative tribunal and perform such other duties as may be requested by the board.

(9) The board may enter into any contracts necessary to the execution of the powers granted to it by this article or to further the intent of this article.
(10) The board may make rules governing its functions and operations and the procurement of state insurance. Except where otherwise provided by statute, rules of the board are subject to the provisions of article three, chapter twenty-nine-a of this code.

(11) The funds received by the board, including, but not limited to, state agency premiums, mine subsidence premiums and political subdivision premiums, shall be deposited with the West Virginia Investment Management Board with the interest income and returns on investment a proper credit to such property insurance trust fund or liability insurance trust fund as applicable.

(b) (1) Definitions. – The following words and phrases when used in this subsection, for the purposes of this subsection, have the meanings respectively ascribed to them in this subsection;

(A) “Political subdivision” has the same meaning as in section three, article twelve-a of this chapter;

(B) “Charitable” or “public service organization” means any hospital in this state which has been certified as a critical access hospital by the federal Centers for Medicare and Medicaid upon the designation of the state Office of Rural Health Policy, the Office of Community and Rural Health Services, the Bureau for Public Health or the Department of Health and Human Resources and any bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office; and,
(C) "Emergency medical service agency" has the same meaning as in section three, article four-c, chapter sixteen of this code.

(2) If requested by a political subdivision, a charitable or public service organization or an emergency medical services agency, the board may, but is not required to, provide property and liability insurance to insure the property, activities and responsibilities of the political subdivision, charitable or public service organization or emergency medical services agency. The board may enter into any contract necessary to the execution of the powers granted by this article or to further the intent of this article.

(A) Property insurance provided by the board pursuant to this subsection may also include insurance on property leased to or loaned to the political subdivision, a charitable or public service organization or an emergency medical services agency which is required to be insured under a written agreement.

(B) The cost of insurance, as determined by the board, shall be paid by the political subdivision, the charitable or public service organization or the emergency medical services agency and may include administrative expenses. For purposes of this section, if an emergency medical services agency is a for-profit entity, its claims history may not adversely affect other participants' rates in the same class.

(c)(1) The board has general supervision and control over the optional medical liability insurance programs providing coverage to health care providers as authorized by the provisions of article twelve-b of this chapter. The board is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article.

(2) The board shall:
(A) Administer the preferred medical liability program and the high risk medical liability program and exercise and perform other powers, duties and functions specified in this article;

(B) Obtain and implement, at least annually, from an independent outside source, such as a medical liability actuary or a rating organization experienced with the medical liability line of insurance, written rating plans for the preferred medical liability program and high-risk medical liability program on which premiums shall be based;

(C) Prepare and annually review written underwriting criteria for the preferred medical liability program and the high-risk medical liability program. The board may utilize review panels, including, but not limited to, the same specialty review panels to assist in establishing criteria;

(D) Prepare and publish, before each regular session of the Legislature, separate summaries for the preferred medical liability program and high-risk medical liability program activity during the preceding fiscal year, each summary to be included in the Board of Risk and Insurance Management audited financial statements as “other financial information” and which shall include a balance sheet, income statement and cash flow statement, an actuarial opinion addressing adequacy of reserves, the highest and lowest premiums assessed, the number of claims filed with the program by provider type, the number of judgments and amounts paid from the program, the number of settlements and amounts paid from the program and the number of dismissals without payment;

(E) Determine and annually review the claims history debit or surcharge for the high-risk medical liability program;

(F) Determine and annually review the criteria for transfer from the preferred medical liability program to the high-risk medical liability program;
(G) Determine and annually review the role of independent agents, the amount of commission, if any, to be paid therefor and agent appointment criteria;

(H) Study and annually evaluate the operation of the preferred medical liability program and the high-risk medical liability program and make recommendations to the Legislature, as may be appropriate, to ensure their viability, including, but not limited to, recommendations for civil justice reform with an associated cost-benefit analysis, recommendations on the feasibility and desirability of a plan which would require all health care providers in the state to participate with an associated cost-benefit analysis, recommendations on additional funding of other state run insurance plans with an associated cost-benefit analysis and recommendations on the desirability of ceasing to offer a state plan with an associated analysis of a potential transfer to the private sector with a cost-benefit analysis, including impact on premiums;

(I) Establish a five-year financial plan to ensure an adequate premium base to cover the long-tail nature of the claims-made coverage provided by the preferred medical liability program and the high risk medical liability program. The plan shall be designed to meet the program's estimated total financial requirements, taking into account all revenues projected to be made available to the program and apportioning necessary costs equitably among participating classes of health care providers. For these purposes, the board shall:

(i) Retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group malpractice plans, to estimate the total financial requirements of the program for each fiscal year and to review and render written professional opinions as to financial plans proposed by the board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the board or the executive director. All reasonable fees and
expenses for actuarial services shall be paid by the board. Any financial plan or modifications to a financial plan approved or proposed by the board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs, including incurred but not reported claims, for the fiscal year for which the plan is proposed. The actuary's opinion for any fiscal year shall include a requirement for establishment of a reserve fund;

(ii) Submit its final, approved five-year financial plan, after obtaining the necessary actuary's opinion, to the Governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the executive director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the board shall also simultaneously submit an audited financial statement based on generally accepted accounting practices (GAAP) and which shall include allowances for incurred but not reported claims: Provided, That the financial statement and the accrual-based financial plan restatement shall not affect the approved financial plan. The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section;

(iii) Submit to the Governor and the Legislature a prospective five-year financial plan beginning on the first day of January, two thousand three, and every year thereafter, for the programs established by the provisions of article twelve-b of this chapter. Factors that the board shall consider include, but shall not be limited to, the trends for the program and the industry; claims history,
number and category of participants in each program; settlements and claims payments; and judicial results;

(iv) Obtain annually, certification from participants that they have made a diligent search for comparable coverage in the voluntary insurance market and have been unable to obtain the same;

(J) Meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the medical liability programs established in article twelve-b of this chapter. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of these programs for the current fiscal year are met;

(K) To analyze the benefit of and necessity for excess verdict liability coverage;

(L) Consider purchasing reinsurance, in the amounts as it may, from time to time, determine is appropriate, and the cost thereof shall be considered to be an operating expense of the board;

(M) Make available to participants, optional extended reporting coverage or tail coverage: Provided, That, at least five working days prior to offering such coverage to a participant or participants, the board shall notify the President of the Senate and the Speaker of the House of Delegates in writing of its intention to do so and such notice shall include the terms and conditions of the coverage proposed;

(N) Review and approve, reject or modify rules that are proposed by the executive director to implement, clarify or explain administration of the preferred medical liability program and the high risk medical liability program. Notwithstanding any provisions in this code to the con-
trary, rules promulgated pursuant to this paragraph are not subject to the provisions of sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The board shall comply with the remaining provisions of article three and shall hold hearings or receive public comments before promulgating any proposed rule filed with the Secretary of State: Provided, That the initial rules proposed by the executive director and promulgated by the board shall become effective upon approval by the board notwithstanding any provision of this code;

(O) Enter into settlements and structured settlement agreements whenever appropriate. The policy may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the policy holder. The board may own or assign any annuity purchased by the board to a company licensed to do business in the state;

(P) Refuse to provide insurance coverage for individual physicians whose prior loss experience or current professional training and capability are such that the physician represents an unacceptable risk of loss if coverage is provided;

(Q) Terminate coverage for nonpayment of premiums upon written notice of the termination forwarded to the health care provider not less than thirty days prior to termination of coverage;

(R) Assign coverage or transfer insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier with the comparable coverage conditions as determined by the board. Any transfer of obligation or risk shall effect a novation of the transferred contract of insurance and if the terms of the assumption reinsurance agreement extinguish all liability of the board and the
State of West Virginia such extinguishment shall be absolute as to any and all parties; and

(S) Meet and consult with and consider recommendations from the Medical Malpractice Advisory Panel established by the provisions of article twelve-b of this chapter.

(d) If, after the first day of September, two thousand two, the board has assigned coverages or transferred all insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier, and the board otherwise has no covered participants, then the board shall not thereafter offer or provide professional liability insurance to any health care provider pursuant to the provisions of subsection (c) of this section or the provisions of article twelve-b of this chapter unless the Legislature adopts a concurrent resolution authorizing the board to reestablish medical liability insurance programs.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and actual expenses incurred in the performance of official business, which compensation shall be in full for all services. The office of the commissioner shall be maintained in the capitol or other suitable place in Charleston. The commissioner may employ such persons and incur such expenses as may be necessary in the discharge of his duties and shall fix the compensation of such employees, but such compensation shall not exceed the appropriation therefor. The commissioner may reimburse employees for reasonable expenses incurred for job-related training and educational seminars and courses.
All compensation for salaries and expenses of the commissioner and his employees shall be paid monthly out of the state treasury by requisition upon the auditor, properly certified by the commissioner.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOLIC BEVERAGE CONTROL COMMISSIONER.


The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code, and shall be paid actual and necessary traveling expenses incurred in performance of the official duties of the office.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2006.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within............ approved............ this the............
Day of............ 2006.

Governor