

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1980

BJW Printers, Beckley, W. Va.



C-641

FOREWORD

This volume contains the Acts of the Second Regular Session of the 64th Legislature.

Regular Session, 1980

The second regular session of the 64th Legislature convened on January 9, 1980. The constitutional 60-day limit on the duration of the session being midnight on March 8, 1980, however, by proclamation of the Governor, the Legislature was extended until March 11, 1980, solely for action on the budget bill, and *sine die* adjournment came on March 11, 1980.

Bills totaling 1,611 were introduced in the two houses during the session (1008 House and 603 Senate). The Legislature passed 136 bills, 75 House and 61 Senate. The Governor approved 134 bills and vetoed two. However, one bill disapproved was repassed, notwithstanding the Governor's objections, leaving a net total of one bill lost through veto.

There were 92 concurrent resolutions introduced during the session, 53 House and 39 Senate, of which thirteen House and four Senate were adopted. Forty-one House Joint and 18 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted two House Joint Resolutions—H. J. R. 13, West Virginia Bingo Amendment and H. J. R. 39, Homestead and Taxation Evemption Amendment. The House had 29 House Resolutions and the Senate had 23 Senate Resolutions, of which 21 House and 20 Senate were adopted.

The Senate failed to pass 85 House bills passed by the House and 79 Senate bills failed passage by the House. Three House bills and three Senate bills died in conference.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the code of West Virginia. These acts may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia.

C. A. BLANKENSHIP, *Clerk*
House of Delegates.

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Regular Session, 1980

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MEMBERS OF THE SENATE

REGULAR SESSION, 1980

OFFICERS

President—W. T. Brotherton, Jr., Charleston
President Pro Tem—Carl E. Gainer, Richwood
Clerk—Todd C. Willis, Logan
Sergeant at Arms—John E. Howell, Charleston
Doorkeeper—E. L. Bevins, Williamson

District	Name	Address
First	Judith A. Herndon (R)	Wheeling
	*Samuel N. Kusic (R)	Weirton
Second	William L. Gilligan (R)	Sistersville
	*Dan R. Tonkovich (D)	Benwood
Third	Frank Deem (R)	Vienna
	*David G. Hanlon (D)	Harrisville
Fourth	*Orton A. Jones (R)	Spencer
	Michael Shaw (R)	Pt. Pleasant
Fifth	Robert R. Nelson (D)	Huntington
	*Walter Rollins (D)	Kenova
Sixth	*John Pat Fanning (D)	Iaeger
	Lafe P. Ward (D)	Williamson
Seventh	*J. Ned Grubb (D)	Man
	J. Robert Rogers (D)	Madison
Eighth	John Boettner (D)	Charleston
	*Mario J. Palumbo (D)	Charleston
Ninth	*Warren R. McGraw (D)	Pineville
	Alan L. Susman (D)	Beckley
Tenth	Richard P. Baylor (D)	Hinton
	*Odell H. Huffman (D)	Princeton
Eleventh	*Pat R. Hamilton (D)	Oak Hill
	Ralph D. Williams (D)	Rainelle
Twelfth	*Richard Benson (D)	Elkins
	Carl E. Gainer (D)	Richwood
Thirteenth	Gino R. Colombo (D)	Nutter Fort
	*Wm. R. Sharpe, Jr. (D)	Weston
Fourteenth	*James L. Davis (D)	Fairmont
	William A. Moreland (D)	Morgantown
Fifteenth	C. N. Harman (R)	Grafton
	*J. D. Hinkle, Jr. (R)	Buckhannon
Sixteenth	*William J. Gates, Jr. (D)	Romney
	Robert M. Steptoe (D)	Martinsburg
Seventeenth	*W. T. Brotherton, Jr. (D)	Charleston
	Si Galperin, Jr. (D)	Charleston

* Elected in 1976. All others elected in 1978.

(D) Democrats	26
(R) Republicans	8
Total	34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1980

OFFICERS

Speaker—Clyde M. See, Jr., Moorefield*Speaker Pro Tem*—Clarence C. Christian, Jr., Princeton*Clerk*—C. A. Blankenship, Pineville*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—Dannie Wingo, Yukon

District	Name	Address
First	Gust G. Brenda, Jr. (D)	Weirton
	George P. Gvoyich (D)	Weirton
Second	Roy E. Givens (D)	Wellsburg
	Pamela Sue Shuman (D)	Wellsburg
Third	George W. Dober (R)	Wheeling
	John M. Karras (D)	Wheeling
	Arthur L. McKenzie (R)	Wheeling
	Paul J. Otte (R)	Wheeling
Fourth	Larry Wiedebusch (D)	Glen Dale
	Albert D. Yanni (D)	Glen Dale
Fifth	Joseph M. Ballouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	West Union
Seventh	Sam White (R)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	Keith Burdette (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	Malcolm B. Loudon (R)	Parkersburg
	Donza T. Worden (D)	Parkersburg
Ninth	Lloyd Darrell Atkinson (R)	Reedy
Tenth	Bill Carmichael (R)	Ripley
	John H. Reed (R)	Hurricane
	Dan Shumate (D)	Ravenswood
	Jimmy Joe Wedge (R)	Pt. Pleasant
Eleventh	Robert C. Chambers (D)	Huntington
	Patricia O. Hartman (D)	Huntington
	Dorsey Ketchum (D)	Huntington
	Charles M. Polan, Jr. (D)	Huntington
	Evelyn E. Richards (R)	Huntington
Twelfth	Forest Underwood (D)	Huntington
	Burnie R. Crabtree (D)	Genoa
Thirteenth	Lucian Fry (D)	Wayne
	Irvine Damron (D)	Lenore
Fourteenth	R. Doyle Van Meter (D)	Williamson
	T. J. Scott (D)	Welch
	Booker T. Stephens (D)	Keystone
Fifteenth	Lacy Wright, Jr. (D)	Bradshaw
	Frank L. Blackwell (D)	Mullens
	Thomas G. Goodwin (D)	Seth
	Troy W. Hendricks (D)	Madison
Sixteenth	Sammy D. Dalton (D)	Harts
	Charles Gilliam (D)	Logan
	Thomas W. Mathis (D)	Logan
	Earl Ray Tomblin (D)	Chapmanville
Seventeenth	John W. Biddle (R)	Charleston
	Darrell E. Holmes (D)	Sissonville
	Thomas A. Knight (D)	Charleston
	Leo Kopelman (R)	East Bank
	Charlotte R. Lane (R)	Charleston
Walter Price, III (R)	Charleston	
Samuel Rubin (R)	Charleston	

HOUSE OF DELEGATES

XV

District	Name	Address
	Lyle Sattes (D)	Charleston
	Walton Shepherd (D)	Sissonville
	Roger W. Tompkins (D)	Charleston
	George B. Warner (R)	Charleston
	Mrs. Russell S. Wehrle (D)	Charleston
	John M. Wells (R)	Charleston
Eighteenth	Vernon Barley (D)	Bradley
	Sterling T. Lewis (D)	Shady Spring
	¹ Phyllis A. Presley (D)	Beckley
	William R. Wooton (D)	Beckley
Nineteenth	Donald Anello (D)	Bramwell
	C. C. Christian, Jr. (D)	Princeton
	Jack E. Holt (D)	Hinton
	W. Marion Shiflet (D)	Union
	Tony E. Whitlow (D)	Princeton
Twentieth	Betty D. Crookshanks (D)	Rupert
	Sarah L. Neal (D)	Rainelle
Twenty-first	Dave Fox (D)	Ansted
	Kim O'Neal (D)	Fayetteville
	Adam Toney (D)	Oak Hill
Twenty-second	² Robert E. Goff (D)	Cowen
	Larry E. Tucker (D)	Summersville
Twenty-third	Robert H. Kidd (D)	Sutton
	Robert Reed (D)	Clay
Twenty-fourth	George E. Arnold (D)	Weston
Twenty-fifth	Michael D. Greer (R)	Salem
	John F. McCuskey (R)	Bridgeport
	Kenneth H. Riffle (D)	Bridgeport
	W. L. Vincent (D)	Shinnston
Twenty-sixth	Paul E. Prunty (R)	Fairmont
	William E. Shingleton (D)	Fairmont
	Benjamin N. Springston (R)	Fairmont
	Cody A. Starcher (D)	Fairmont
Twenty-seventh	Ralph Brown (D)	Arthurdale
	Tom Clark (R)	Morgantown
	³ Stephen L. Cook (D)	Morgantown
	Larry E. Schifano (D)	Morgantown
Twenty-eighth	James W. Teets (R)	Terra Alta
Twenty-ninth	E. E. Bryan (D)	Philippi
	Charles R. Shaffer (R)	Buckhannon
Thirtieth	J. E. Martin (D)	Elkins
	Jae Spears (D)	Elkins
Thirty-first	Clyde M. See, Jr. (D)	Moorefield
Thirty-second	Guy Ross Smith (D)	Davis
Thirty-third	Robert D. Harman (R)	Keyser
Thirty-fourth	William T. Milleson (D)	Springfield
Thirty-fifth	Joseph E. Caudle (D)	Martinsburg
	Terry T. Harden (D)	Berkeley Springs
	Clarence E. Martin, III (D)	Martinsburg
Thirty-sixth	James M. Moler (D)	Charles Town

¹Appointed January 17, 1979, to fill the vacancy created by the resignation of the Honorable Ted T. Stacy.

²Appointed January 9, 1980, to fill the vacancy created by the death of the Honorable Robert L. Ward.

³Appointed January 17, 1980, to fill the vacancy created by the resignation of the Honorable Clyde H. Richey.

(D) Democrats	74
(R) Republicans	26
Total	100

STANDING COMMITTEES OF THE SENATE

1980

Agriculture

Williams (Chairman), Oates (Vice Chairman), Baylor, Benson, Hamilton, Hanlon, McGraw, Steptoe, Susman, Jones and Shaw.

Banking and Insurance

Rogers (Chairman), Williams (Vice Chairman), Baylor, Benson, Hamilton, Huffman, Moreland, Rollins, Steptoe, Susman, Ward, Gilligan and Kusic.

Confirmations

Benson (Chairman), Galperin (Vice Chairman), Colombo, Davis, Hamilton, McGraw, Oates, Rogers, Tonkovich, Williams, Gilligan, Herndon and Kusic.

Education

Nelson (Chairman), Oates (Vice Chairman), Boettner, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Sharpe, Steptoe, Deem, Gilligan, Herndon and Jones.

Elections

Oates (Chairman), Nelson (Vice Chairman), Benson, Galperin, Hamilton, Huffman, McGraw, Moreland, Palumbo, Gilligan and Herndon.

Energy, Industry and Mining

Susman (Chairman), Rogers (Vice Chairman), Baylor, Benson, Boettner, Gainer, Grubb, Hamilton, Williams, Hinkle and Kusic.

Finance

Fanning (Chairman), Susman (Vice Chairman), Boettner, Colombo, Gainer, Grubb, Hanlon, McGraw, Oates, Rollins, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harman, Herndon and Hinkle.

Health

Huffman (Chairman), Tonkovich (Vice Chairman), Boettner, Davis, Galperin, Hamilton, Hanlon, Moreland, Sharpe, Jones and Shaw.

Interstate Cooperation

Gainer (Chairman), Moreland (Vice Chairman), Davis, Huffman, Nelson, Oates and Hinkle. (President is *ex officio* nonvoting member).

Judiciary

Palumbo (Chairman), Oates (Vice Chairman), Baylor, Benson, Davis, Gainer, Galperin, Hamilton, Huffman, Moreland, Nelson, Rogers, Rollins, Ward, Deem, Jones, Kusic and Shaw.

Labor

Davis (Chairman), Hamilton (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Tonkovich, Deem and Kusic.

Local Government

Galperin (Chairman), Moreland (Vice Chairman), Benson, Boettner, Hanlon, Huffman, Steptoe, Herndon and Hinkle.

Military

Moreland (Chairman), McGraw (Vice Chairman), Baylor, Boettner, Colombo, Ward, Williams, Harman and Hinkle.

Natural Resources

Gainer (Chairman), Benson (Vice Chairman), Baylor, Colombo, Galperin, Grubb, McGraw, Oates, Palumbo, Rogers, Rollins, Steptoe, Deem, Harman and Hinkle.

Public Institutions

Sharpe (Chairman), Rollins (Vice Chairman), Colombo, Davis, Hamilton, Hanlon, Nelson, Oates, Tonkovich, Hinkle and Shaw.

Rules

Brotherton (Chairman *ex officio*), Fanning, Gainer, Nelson, Palumbo, Sharpe, Susman, Ward, Harman and Herndon.

Transportation

Steptoe (Chairman), Davis (Vice Chairman), Colombo, Gainer, Hamilton, Hanlon, Huffman, McGraw, Nelson, Palumbo, Sharpe, Tonkovich, Williams, Deem, Jones, Kusic and Shaw.

SENATE COMMITTEES

JOINT COMMITTEES

Enrolled Bills

Davis (Chairman), Baylor, Rogers, Hinkle and Jones.

Government and Finance

Brotherton (Cochairman), Fanning, Palumbo, Sharpe, Ward, Gilligan and Harman.

Joint Rules

Brotherton (Chairman ex officio), Ward and Harman.

Legislative Rule-Making Review Committee

Stephoe (Chairman), Moreland, Rogers, Rollins, Herndon and Hinkle. (President is ex officio nonvoting member).

**PURCHASING PRACTICES AND PROCEDURES
COMMISSION**

Brotherton (Chairman), McGraw, Nelson, Gilligan and Jones.

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES**

1980

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Milleson (Vice Chairman of Agriculture), Ballouz (Chairman of Natural Resources), Worden (Vice Chairman of Natural Resources), Arnold, Brenda, Brown, Bryan, Cook, Damron, Fry, Goodwin, Harden, Hendricks, Reed (23rd Dist.), Shiflet, Smith, Underwood, Whitlow, Atkinson, Clark, Rubin, Shaffer, Springston and Swann.

Banking and Insurance

Shepherd (Chairman of Banking), Tomblin (Vice Chairman of Banking), Martin (35th Dist.) (Chairman of Insurance), Karras (Vice Chairman of Insurance), Anello, Bryan, Fry, Goff, Hartman, Holmes, Milleson, Moler, Schifano, Scott, Shiflet, Shingleton, Toney, Tucker, Wright, Greer, Kopelman, McCuskey, Reed (10th Dist.), Shaffer and Warner.

Constitutional Revision

Wehrle (Chairman), Wooton (Vice Chairman), Ballouz, Caudle, Chambers, Dalton, Farley, Fox, Ketchum, Knight, Martin (30th Dist.), Martin (35th Dist.), Mathis, Neal, Shuman, Spears, Stephens, Tucker, Wright, Harman, Kopelman, McCuskey, Reed (10th Dist.), Warner and White.

Education

Sattes (Chairman), Hartman (Vice Chairman), Ballouz, Barley, Blackwell, Burdette, Cook, Dalton, Fox, Fry, Givens, Goodwin, Ketchum, Kidd, Moler, Shumate, Underwood, Worden, Yanni, Atkinson, Clark, Dober, Prunty, Springston and Warner.

Finance

Polan (Chairman), Farley (Vice Chairman), Anello, Brenda, Brown, Harden, Holmes, Karras, Lewis, Mathis, Milleson, Neal, Reed (23rd Dist.), Spears, Tomblin, Toney, Van Meter, Wehrle, Wright, Harman, Kopelman, McCuskey, Otte, Swann and Wells.

Government Organization

Shuman (Chairman), Whitlow (Vice Chairman), Burdette, Crabtree, Fox, Fry, Goff, Hendricks, Holt, Knight, Moler, O'Neal, Presley, Schifano, Shumate, Vincent, Wiedebusch, Worden, Biddle, McKenzie, Price, Reed (10th Dist.), Richards, Rubin and Wedge.

Health and Welfare

Schifano (Chairman), Ketchum (Vice Chairman), Arnold, Ballouz, Caudle, Crookshanks, Goff, Gvoyich, Harden, Hartman, Knight, Lewis, Moler, Shumate, Smith, Spears, Tomblin, Wehrle, Worden, Harman, Lane, Loudon, McKenzie, Otte and Price.

Industry and Labor

Wiedebusch (Chairman), Hendricks (Vice Chairman), Blackwell, Caudle, Christian, Damron, Gilliam, Gvoyich, Holmes, Holt, Kidd, Knight, O'Neal, Presley, Riffle, Starcher, Underwood, Whitlow, Yanni, Atkinson, Biddle, Carmichael, Greer, Prunty and Richards.

Interstate Cooperation

Bryan (Chairman), Brenda, Christian, Gilliam, Scott, Harman and Swann. (Speaker is ex officio nonvoting member).

Judiciary

Albright (Chairman), Tucker (Vice Chairman), Bryan, Caudle, Chambers, Christian, Crookshanks, Damron, Gilliam, Gvoyich, Martin (30th Dist.), Martin (35th Dist.), Riffle, Scott, Shepherd, Shingleton, Starcher, Stephens, Wooton, Carmichael, Greer, Lane, Loudon, Shaffer and White.

Political Subdivisions

Toney (Chairman), Yanni (Vice Chairman), Anello, Brown, Burdette, Cook, Fox, Fry, Hendricks, Ketchum, Lewis, Mathis, Shepherd, Shuman, Stephens, Van Meter, Vincent, Wiedebusch, Wooton, Biddle, Dober, Lane, Richards, Wells and White.

Roads and Transportation

Goodwin (Chairman), Gvoyich (Vice Chairman), Arnold, Barley, Blackwell, Chambers, Christian, Crabtree, Crookshanks, Dalton, Givens, Harden, Holt, Presley, Shumate, Smith, Starcher, Tomblin, Vincent, McKenzie, Price, Prunty, Rubin, Swann and Wedge.

Rules

See (Ex officio Chairman), Albright, Brenda, Mathis, Polan, Sattes, Shiflet, Tompkins, Tucker, Greer, Swann and Teets.

State and Federal Affairs

Scott (Chairman), Van Meter (Vice Chairman), Barley, Chambers, Crabtree, Dalton, Farley, Fry, Givens, Karras, Kidd, Martin (30th Dist.), O'Neal, Reed (23rd Dist.), Riffle, Shuman, Stephens, Underwood, Whitlow, Carmichael, Clark, Dober, Louden, Springston and Wedge.

JOINT COMMITTEES

Enrolled Bills

Christian (Chairman), Holmes (Vice Chairman), Spears, Otte, and Wells.

Government and Finance

See (Cochairman), Albright, Polan, Shiflet, Tompkins, Greer and Teets.

Joint Rules

See (Chairman ex officio), Tompkins and Teets.

**Legislative Rule-Making
Review Committee**

Shingleton (Chairman), Bryan, Shiflet, Wiedebusch, Shaffer and Teets. (Speaker is ex officio nonvoting member).

**PURCHASING PRACTICES AND PROCEDURES
COMMISSION**

See (Chairman), Sattes, Tucker, Harman and Teets.

LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1980

CHAPTER 1

(Com. Sub. for H. B. 1553—By Mr. Speaker, Mr. See, and Mr. Teets)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and eight, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two-a by adding thereto a new section, designated section sixteen-a, all relating to public markets; definition; surety bond for benefit of consignors; separate account required; prompt payment required; penalties.

Be it enacted by the Legislature of West Virginia:

That sections one and eight, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two-a be further amended by adding thereto a new section, designated section sixteen-a, all to read as follows:

ARTICLE 2A. PUBLIC MARKETS.

§19-2A-1. Public market defined.

§19-2A-8. Applicant for permit to furnish surety bond for benefit of consignors.

§19-2A-16a. Separate account required; prompt payment required; penalties.

§19-2A-1. Public market defined.

- 1 A public market is (1) any place of business where live-
- 2 stock, poultry, and other agricultural or horticultural products
- 3 are received and sold at public auction or, (2) any place where
- 4 livestock is received from producers, assembled and sold, or
- 5 offered for sale, by any method including, but not limited to,

6 public auction. The term public market shall include all such
7 places where such activities are conducted, whether or not such
8 activities are performed according to a scheduled routine or
9 a historically established pattern of days and times.

§19-2A-8. Applicant for permit to furnish surety bond for benefit of consignors.

1 Before the granting of any such permit, the applicant shall
2 execute and deliver to the commissioner a surety bond con-
3 ditioned as the commissioner may require and acceptable
4 to him, payable to the state of West Virginia, for the bene-
5 fit of the consignors at said market of livestock, poultry,
6 and other agricultural and horticultural products, who have
7 been wronged or damaged by any fraud or fraudulent prac-
8 tices of the market and so adjudged by a court of competent
9 jurisdiction and who shall have the right of action for damage
10 for compensation against such bond. A holder of a permit,
11 who shall have been in operation not less than twelve months,
12 shall maintain and deliver such bond to said commissioner
13 as aforesaid in an amount not to exceed one hundred twenty
14 percent of the average of its sales during the preceding calendar
15 year. A holder of a permit, who shall have been in operation
16 less than twelve months, shall maintain and deliver such bond
17 to said commissioner as aforesaid in an amount established
18 by the commissioner, but in no case shall the bond be less
19 than the average bond maintained by all other public markets
20 in the state that have been in operation more than twelve
21 months.

§19-2A-16a. Separate account required; prompt payment required; penalties.

1 Every public market, as defined in section one of this
2 article, shall maintain a separate bank account for the
3 deposit of sale proceeds due to shippers and producers of
4 the products and sales subject to the provisions of this
5 article. All payments due to shippers and producers for
6 such products and sales shall be drawn upon the separate
7 account herein required and such payments shall be made
8 within seventy-two hours following the conclusion of the daily
9 activities at such market. Anyone violating the provisions of

10 this section shall be guilty of a misdemeanor and subject to
11 the penalties prescribed in section nineteen of this article.

CHAPTER 2

(S. B. 54—By Mr. Galperin)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twelve-d, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of program for eradication of the noxious weed known as multiflora rose; providing for a pilot research and testing program; and providing for cooperation among state agencies for purposes of control and ultimate eradication of multiflora rose.

Be it enacted by the Legislature of West Virginia:

That section eight, article twelve-d, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-8. Cooperation with federal and state agencies; drug producing plants declared noxious; establishment of program for eradication of multiflora rose.

1 (a) The commissioner is authorized to cooperate in any
2 way with any person in order to prevent the establish-
3 ment of noxious weeds in this state.

4 (b) The commissioner is authorized to cooperate in any
5 way with any person in programs designed to suppress or
6 control noxious weeds already widely distributed in the
7 state without first declaring a quarantine.

8 (c) The commissioner may, upon request, cooperate
9 with federal and state agencies and political subdivisions
10 in the enforcement of the narcotic laws to the extent of

11 preventing the spread of and destroying marijuana or
12 hemp, *Cannabis* spp., or other plants which produce drugs
13 which have been condemned for destruction under the
14 narcotics laws: *Provided*, That nothing herein shall
15 authorize the commissioner to participate in a criminal
16 investigation or prosecution under the Controlled Sub-
17 stances Act or federal narcotic laws. Such drug producing
18 plants are hereby declared noxious.

19 (d) It is hereby declared to be the policy of the
20 Legislature to control, and ultimately to eradicate, in
21 West Virginia the noxious weed known as multiflora rose,
22 which, having been introduced into West Virginia, multi-
23 plied and infested fields and meadows to the point where
24 it defies eradication or control by means available to the
25 average landowner.

26 The commissioner shall take any and all action neces-
27 sary to eradicate the multiflora rose, *Rosa multiflora*,
28 including, but not limited to, the commissioner's initiat-
29 ing a research and testing program.

30 The commissioner is therefore authorized to initiate a
31 research and testing program for the control, and ulti-
32 mately the eradication, of multiflora rose on suitable
33 lands, public or private, which are infested by that nox-
34 ious weed. The program may include control of any and
35 all means by which multiflora rose is spread, whether by
36 plant, animal or fowl, or by any other means. If the land
37 to be used for the program is privately owned, then the
38 owner must give his consent in writing to such use. In
39 selecting the site for, and in conducting the program on
40 the land the commissioner shall solicit the opinion of
41 persons and groups affected by, or concerned about the
42 proliferation of multiflora rose.

43 In conducting the program the commissioner shall use
44 only such chemicals and other means that have been
45 tested and determined to be reasonably safe for the
46 purposes stated herein, and shall take all due care to
47 avoid injury and damage to plant, animal and human life
48 and health and to all structures of any kind on or near
49 the site of the test program.

50 All agencies of state government and its political sub-
51 divisions shall cooperate with the commissioner for the
52 purposes stated herein, and the commissioner shall use
53 any public moneys available or appropriated for the pilot
54 program. The commissioner may also use, as part of a
55 cost-sharing program, any moneys contributed voluntarily
56 by landowners, including persons whose land may be
57 used for the program. The results of such programs shall
58 be reported to the Legislature at its next regular session.

CHAPTER 3

(Com. Sub. for S. B. 100—By Mr. Brotherton, Mr. President)

[Passed March 11, 1980; in effect from passage. Approved by the Governor
after deleting salary increase for the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title

1. **General Provisions.**
2. **Appropriations.**
3. **Administration.**

TITLE 1. GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.

1 **Section 1. General policy.**—The purpose of this bill is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hun-
5 dred eighty-one.

1 **Sec. 2. Definitions.**—For the purpose of this act: “Gov-
2 ernor” shall mean the Governor of the State of West Vir-
3 ginia.

4 "Spending unit" shall mean the department, agency or
5 institution to which an appropriation is made.

6 The "fiscal year one thousand nine hundred eighty-one"
7 shall mean the period from July first, one thousand nine
8 hundred eighty through June thirtieth, one thousand nine
9 hundred eighty-one.

10 "From collections" shall mean that part of the total
11 appropriation which must be collected by the spending
12 unit to be available for expenditure. If the authorized
13 amount of collections is not collected, the total appropria-
14 tion for the spending unit shall be reduced automatically
15 by the amount of the deficiency in the collection. If the
16 amount collected exceeds the amount designated "from
17 collections," the excess shall be set aside in a special sur-
18 plus fund and may be expended for the purpose of the
19 spending unit as provided by Chapter 5A, Article 2 of the
20 Code of West Virginia.

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion for:

3 "Personal services" shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit, but shall not include fees
6 or contractual payments paid to consultants or to inde-
7 pendent contractors engaged by the spending unit.

8 From appropriations made to the spending units of state
9 government, there may be transferred upon approval of the
10 Governor to a special account an amount sufficient to match
11 federal funds under any federal act.

12 Unless otherwise specified, appropriations for personal
13 services shall include salaries of heads of spending units.

14 "Current expenses" shall mean operating costs other
15 than personal services, and shall not include equipment,
16 repairs and alterations, buildings or lands.

17 "Equipment" shall mean equipment items which have an
18 appreciable and calculable period of usefulness in excess of
19 one year.

20 "Repairs and alterations" shall mean repairs to struc-

21 tures and improvements to property which do not increase
22 the capital assets.

23 "Buildings" shall include construction and alteration of
24 structures and the improvement of lands and shall include
25 shelter, support, storage, protection or the improvement of
26 a natural condition; and

27 "Lands" shall mean the purchase of real property or
28 interests in real property.

29 Appropriations classified in any of the above categories
30 shall be expended only for the purposes as defined above.

31 Appropriations otherwise classified shall be expended
32 only where the distribution of expenditures for different
33 purposes cannot well be determined in advance or it is
34 necessary or desirable to permit the spending unit freedom
35 to spend an appropriation for more than one of the above
36 classifications.

1 **Sec. 4. Method of expenditure.**—Money appropriated by
2 this act, unless otherwise specifically directed, shall be ap-
3 propriated and expended according to the provisions of
4 Chapter 12, Article 3 of the Code of West Virginia, or ac-
5 cording to any law detailing a procedure specifically
6 limiting that article.

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§14. Appropriations to pay costs of publication of delinquent corporations.

§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

1 **Section 1. Appropriations from general revenue.**—From
 2 the state fund, General Revenue, there is hereby appropri-
 3 ated conditionally upon the fulfillment of the provisions
 4 set forth in Chapter 5A, Article 2 of the Code of West Vir-
 5 ginia, the following amounts, as itemized, for expenditure
 6 during the fiscal year one thousand nine hundred eighty-
 7 one.

LEGISLATIVE

Acct. No. 1010

1—Senate

	<i>Fiscal Year</i> 1980-1981
1 Compensation of Members	\$ 275,000
2 Compensation and per diem of officers and 3 employees	750,000
4 Expenses of Members	250,000
5 Current Expenses and Contingent Fund	300,000
6 Printing Blue Book	175,000
7 Total	\$ 1,750,000

8 The distribution of the Blue Book shall be by
 9 the office of the Clerk of the Senate and shall
 10 include seventy-five copies for each member
 11 of the Legislature and two copies to each
 12 classified and approved High and Junior
 13 High School and one to each Elementary
 14 School within the state.

15 The appropriations for the Senate for the fiscal
 16 year 1979-80 are to remain in full force and
 17 effect, and are hereby reappropriated to
 18 June 30, 1981.

19 Any balances so reappropriated may be trans-
 20 ferred and credited to the 1980-81 accounts.

21 Upon written request of the Clerk of the Senate,
 22 the State Auditor shall transfer amounts be-
 23 tween items of the total appropriation in

24 order to protect or increase the efficiency
25 of service.

26 The Clerk of the Senate with approval of
27 the President is authorized to draw his
28 requisitions upon the Auditor, payable out of
29 the Current Expenses and Contingent Fund
30 of the Senate, for any bills for supplies and
31 services that may have been incurred by the
32 Senate and not included in the appropriation
33 bill, for supplies and services incurred in
34 preparation for the opening, the conduct of
35 the business and after adjournment of any
36 regular or extraordinary session, and for the
37 necessary operation of the Senate offices, the
38 requisition for same to be accompanied by
39 the bills to be filed with the Auditor.

40 The Clerk of the Senate with written approval
41 of the President shall have authority to em-
42 ploy such staff personnel during any session
43 of the Legislature as shall be needed in ad-
44 dition to staff personnel authorized by the
45 Senate resolution adopted during any such
46 session. The Clerk of the Senate with approv-
47 al of the President shall have authority to em-
48 ploy such staff personnel between sessions of
49 the Legislature as shall be needed, the com-
50 pensation of all staff personnel during and be-
51 tween sessions of the Legislature, notwith-
52 standing any such Senate resolution, to be
53 fixed by the President of the Senate. The
54 Clerk is hereby authorized to draw his re-
55 quisitions for the payment of all such staff
56 personnel upon the State Auditor, payable
57 out of the appropriation for Compensation
58 and per diem of officers and employees or
59 Current Expenses and Contingent Fund of
60 the Senate for such services.

61 For duties imposed by law and the Senate, the
62 Clerk of the Senate shall be paid a monthly

63 salary as provided in Senate resolution adopt-
 64 ed January, 1980, and payable out of the
 65 amount appropriated for Compensation and
 66 per diem of officers and employees.

2—*House of Delegates*

Acct. No. 1020

1 Compensation of Members	\$ 750,000
2 Compensation and per diem of officers	
3 and employees	550,000
4 Expenses of Members	420,000
5 Current Expenses and Contingent Fund	550,000
	<hr/>
6 Total	\$ 2,270,000

7 The appropriations for the House of Delegates
 8 for the fiscal year 1979-80 are to remain in full
 9 force and effect, and are hereby reappropriated
 10 to June 30, 1981.

11 Any balances so reappropriated may be trans-
 12 ferred and credited to the 1980-81 accounts.

13 Upon the written request of the Clerk of the
 14 House of Delegates, the State Auditor shall
 15 transfer amounts between items of the total
 16 appropriation in order to protect or increase
 17 the efficiency of the service.

18 The Clerk of the House of Delegates, with ap-
 19 proval of the Speaker, is authorized to draw
 20 his requisitions upon the Auditor, payable
 21 out of the Contingent Fund of the House of
 22 Delegates, for any bills for supplies and ser-
 23 vices that may have been incurred by the
 24 House of Delegates, and not included in the
 25 appropriation bill, for bills for services and
 26 supplies incurred in preparation for the open-
 27 ing of the session and after adjournment, and
 28 for the necessary operation of the House of
 29 Delegates offices, the requisition for the same
 30 to be accompanied by bills to be filed with the
 31 Auditor.

32 For duties imposed by law and by the House of
 33 Delegates, including salary allowed by law as
 34 keeper of the rolls, the Clerk of the House of
 35 Delegates shall be paid a monthly salary as
 36 provided in House Resolution adopted Janu-
 37 ary, 1980, payable from the Per Diem of Offi-
 38 cers and Employees Fund or the Contingent
 39 Fund of the House of Delegates, and the
 40 full-time employees of the House of Dele-
 41 gates shall be paid at the salaries provided in
 42 said resolution.

43 The Speaker of the House of Delegates upon
 44 approval of the House Committee on Rules,
 45 shall have authority to employ such staff
 46 personnel during and between sessions of the
 47 Legislature as shall be needed, and the Clerk
 48 of the House is hereby authorized to draw
 49 requisitions upon the State Auditor, payable
 50 from the Per Diem of Officers and Employees
 51 Fund or the Contingent Fund of the House of
 52 Delegates, for such services.

3—Joint Expenses

Acct. No. 1030

1	Joint Committee on Government and	
2	Finance	\$ 5,059,062
3	To pay cost of Legislative Printing	700,000
4	Other Legislative Committees	50,000
5	Commission on Interstate Cooperation	80,000
6	Total	<u>\$ 5,889,062</u>

7 The appropriations for Joint Expenses for the
 8 fiscal year 1979-80 are to remain in full force
 9 and effect and are hereby reappropriated to
 10 June 30, 1981. Any balances so reappropria-
 11 ted may be transferred and credited to the
 12 1980-81 accounts.

13 Upon written request of the Clerk of the Senate
 14 and the Clerk of the House of Delegates, the

15 State Auditor shall transfer amounts be-
 16 tween items of the total appropriation in
 17 order to protect or increase the efficiency of
 18 the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1 Personal Services	\$ 11,732,926
2 Other Expenses	1,660,730
3 Judges Retirement System	750,000
4 Other Court Costs	1,725,000
5 Judicial Training	
6 Program	50,000
7 Mental Hygiene Fund	325,000
8 Total	<u>\$ 16,243,656</u>

9 This appropriation shall be administered by the
 10 Administrative Director of the State Supreme
 11 Court of Appeals who shall draw his requisitions for warrants in payment in the form of
 12 payrolls, making deductions therefrom, as re-
 13 quired by law, for taxes and other items.
 14

15 The appropriation for Judges Retirement
 16 System is to be transferred to the Judges
 17 Retirement Fund, in accordance with the law
 18 relating thereto upon requisition of the Ad-
 19 ministrative Director of the State Supreme
 20 Court of Appeals.

21 Any unexpended balance remaining in this
 22 appropriation at the close of fiscal year 1979-
 23 80 is hereby reappropriated for expenditure
 24 during the fiscal year 1980-81.

EXECUTIVE

5—*Governor's Office*

Acct. No. 1200

1	*Salary of Governor	\$	50,000
2	Other Personal Services		881,920
3	Current Expenses		238,969
4	Equipment		4,660
<hr/>			
5	*Total	\$	1,175,549

6—*Office of Economic and Community Development*

Acct. No. 1210

1	Personal Services	\$	2,295,762
2	Current Expenses		2,269,327
3	Equipment		14,819
4	Office of Criminal Justice and Highway Safety ..		285,165
5	The Economic Development Loan Fund		2,000,000
6	Regional Council—to match Federal Funds ...		220,000
7	A.R.C. Assessment		375,000
8	E.D.A. 304		138,185
<hr/>			
9	Total	\$	7,598,258

- 10 Any unexpended balance remaining in accounts
 11 "Federal-State Coordination," "Office of
 12 Criminal Justice and Highway Safety,"
 13 "Regional Council to match Federal Funds,"
 14 and "National Youth Science Camp" at the
 15 close of the fiscal year 1979-80 is hereby re-
 16 appropriated for expenditure during the fiscal
 17 year 1980-81.

7—*Governor's Office—Custodial Fund*

Acct. No. 1230

1	Unclassified—Total	\$	213,194
2	To be used for current general expenses, in-		
3	cluding compensation of employees, house-		

* Governor deleted the salary increase for the Governor of \$4,504, and reduced the total appropriation to correspond thereto.

- 4 hold maintenance, cost of official functions,
 5 and any additional household expenses oc-
 6 casioned by such official functions.

8—*Governor's Office—Civil Contingent Fund*

Acct. No. 1240

1 Unclassified—Total\$ 1,000,000

- 2 Of the appropriation there may be expended,
 3 at the discretion of the Governor, an amount
 4 not to exceed \$1,000 as West Virginia's
 5 contribution to the Interstate Oil Compact
 6 Commission.

- 7 Any unexpended balance remaining in this ap-
 8 propriation at the close of the fiscal year
 9 1979-80 is hereby reappropriated for expendi-
 10 ture during the fiscal year 1980-81.

9—*Governor's Office—Disaster Relief-Matching*

Acct. No. 1260

1 Unclassified—Total\$ 50,000

- 2 To match and aid Federal Programs, and any
 3 part of this appropriation may be transferred
 4 to any department for such purposes.

10—*Governor's Office—McMechen and Stonewood Relief*

Acct. No. 1270

- 1 Any unexpended balance remaining in the ap-
 2 propriation for "Governor's Office—Stone-
 3 wood Relief" at the close of the fiscal year
 4 1979-80 is hereby reappropriated for expendi-
 5 ture during the fiscal year 1980-81.

11—*Office of Emergency Services*

Acct. No. 1300

1	Personal Services	\$ 175,506
2	Current Expenses	40,449
3	Total	<u>\$ 215,955</u>

FISCAL

12—Auditor's Office—General Administration

Acct. No. 1500

1	Salary of State Auditor	\$	35,428
2	Other Personal Services		1,186,114
3	Current Expenses		434,753
4	Equipment		39,699
5	Microfilm		20,000
6	Representation of Needy Persons Fund.....		1,750,000
			<hr/>
7	Total	\$	3,465,994

13—Auditor's Office—Social Security

Acct. No. 1510

- 1 To match contributions of state employees for
 2 Social Security—Total\$ 11,000,000
- 3 The above appropriation is intended to cover
 4 the state's share of social security costs for
 5 those spending units operating from General
 6 Revenue Fund. The State Department of
 7 Highways, Department of Motor Vehicles,
 8 Workmen's Compensation Commission, Pub-
 9 lic Service Commission, and other depart-
 10 ments operating from Special Revenue Funds
 11 and/or Federal Funds shall pay their pro-
 12 portionate share of the social security cost
 13 for their respective divisions.
- 14 Any unexpended balance remaining in the ap-
 15 propriation for "Auditor's Office—Social
 16 Security" at the close of the fiscal year 1979-
 17 80 is hereby reappropriated for expenditure
 18 during the fiscal year 1980-81.

14—Treasurer's Office

Acct. No. 1600

1	Salary of State Treasurer	\$	38,153
2	Other Personal Services		601,332

3	Current Expenses	242,470
4	Equipment	37,700
5	Total	\$ 919,655

15—*Treasurer's Office—School Building Sinking Fund*

Acct. No. 1650

1	Total	\$ 16,136,500
2	Any unexpended balance remaining in the ap-	
3	propriation for "Treasurer's Office — School	
4	Building Sinking Fund" at the close of the	
5	fiscal year 1979-80 is hereby reappropriated	
6	for expenditure during the fiscal year 1980-	
7	81.	

16—*Municipal Bond Commission*

Acct. No. 1700

1	Personal Services	\$ 66,388
2	Current Expenses	10,930
3	Equipment	450
4	Total	\$ 77,768

17—*State Tax Department*

Acct. No. 1800

1	Personal Services	\$ 4,437,005
2	Current Expenses	2,257,579
3	Equipment	67,444
4	Circuit Breaker Reimbursement	15,000
5	Total	\$ 6,777,028

6 Items 1, 2 and 3 of the above appropriation
 7 includes funds to be used per Enrolled Senate
 8 Bill No. 122, Acts of the Legislature, Regular
 9 Session, 1979.

18—*State Tax Department*
Property Appraisal

Acct. No. 1850

1	Personal Services	\$ 1,676,320
2	Other Expenses	606,300
3	Equipment	25,500
		<hr/>
4	Total.....	\$ 2,308,120
5	Any unexpended balance remaining in the ap-	
6	propriation for "Other Expenses" at the close	
7	of the fiscal year 1979-80 is hereby reappro-	
8	priated for expenditure during the fiscal	
9	year 1980-81.	

19—*Department of Finance and Administration*

Acct. No. 2100

1	Personal Services	\$ 2,521,891
2	Current Expenses	818,708
3	Repairs and Alterations	277,700
4	Equipment	5,306
5	Postage	650,000
6	Utilities	350,000
7	Fire Service Fee	73,965
8	Building Equipment and Supplies	10,000
		<hr/>
9	Total.....	\$ 4,707,570
10	The Workmen's Compensation Commission,	
11	Department of Welfare, Public Service Com-	
12	mission, Department of Natural Resources,	
13	Department of Motor Vehicles, State Depart-	
14	ment of Highways, State Health Department	
15	and State Tax Department—Income Tax Di-	
16	vision shall reimburse the Postage appropri-	
17	ation of the Department of Finance and Ad-	
18	ministration monthly for all meter service.	
19	Any spending unit operating from Special	
20	Revenue or receiving reimbursement for	
21	postage costs from the federal government	

22 shall refund to the Postage account of the
 23 Department of Finance and Administration
 24 such amounts. Should this appropriation for
 25 Postage be insufficient to meet the mailing
 26 requirements of the state spending units as
 27 set out above, any excess postage meter ser-
 28 vice requirements shall be a proper charge
 29 against the units, and each spending unit
 30 shall refund to the Postage appropriation
 31 of the Department of Finance and Adminis-
 32 tration any amounts required for the Depart-
 33 ment for postage in excess of this appropria-
 34 tion.

35 Any unexpended balance remaining in the
 36 "Postage Account" at the close of the fiscal
 37 year 1979-80 is hereby reappropriated for
 38 expenditure during the fiscal year 1980-81.

39 Any unexpended balances remaining at the
 40 close of the fiscal year 1979-80 for "Major
 41 Building Repairs" is hereby reappropriated
 42 for expenditure during the fiscal year 1980-
 43 81 (Major Building Repairs to include
 44 maintenance and repairs to Governor's Man-
 45 sion).

46 State Department of Highways shall reimburse
 47 the appropriation of the Department of Fi-
 48 nance and Administration monthly for all
 49 actual expenses incurred pursuant to the
 50 provisions of Chapter 17, Article 2A, Sec-
 51 tion 13 of the Code of West Virginia.

20—*State Board of Insurance*

Acct. No. 2250

1	Personal Services	\$	89,375
2	Current Expenses		23,877
3	Equipment		1,270
4	Insurance Fund		2,000,000
5	Total	\$	2,114,522

6 The above appropriation on line 4 is for the
 7 purpose of paying premiums, self-insurance
 8 losses, loss adjustment expenses and loss
 9 prevention engineering fees for property, cas-
 10 ualty and fidelity insurance for the various
 11 state agencies. Should this appropriation be
 12 insufficient to meet the requirements of the
 13 state spending units, any excess costs shall
 14 be a proper charge against the units and each
 15 spending unit shall reimburse to the Board
 16 of Insurance any amounts required for that
 17 department for costs in excess of this appro-
 18 priation.

19 Any and all of the funds appropriated for "In-
 20 surance Fund" may be transferred to a
 21 special account for the payment of premiums,
 22 self-insurance losses, loss adjustment ex-
 23 penses and loss prevention engineering fees.

24 Any or all of the funds appropriated for "In-
 25 surance Fund" may be transferred to a
 26 special account for disbursement for pay-
 27 ment of premiums and insurance losses.

LEGAL

21—Attorney General

Acct. No. 2400

1	Salary of Attorney General	\$	38,153
2	Other Personal Services		1,342,593
3	Current Expenses		188,638
4	Publication of Reports and Opinions		20,000
5	Equipment		35,000
6	To protect the resources or tax structure of the		
7	state in controversies or legal proceedings		
8	affecting same		3,250
9	Consumer Protection		236,692
	Personal Services	181,850	
	Current Expenses	48,542	
	Equipment	6,300	
10	Total	\$	1,864,326

11 When legal counsel or secretarial help is ap-
 12 pointed by the Attorney General, for any
 13 state spending unit, this account shall be
 14 reimbursed from such unit's appropriated
 15 account in an amount agreed upon by the
 16 Attorney General and the proper authority
 17 of said spending unit.

22—*Commission on Uniform State Laws*

Acct. No. 2450

1	Unclassified—Total	\$	11,000
2	To pay expenses of members of the Commis-		
3	sion on Uniform State Laws.		

INCORPORATING AND RECORDING

23—*Secretary of State*

Acct. No. 2500

1	Salary of Secretary of State	\$	32,702
2	Other Personal Services		344,714
3	Current Expenses		118,267
4	Equipment		5,499
5	Certification of Primary and General Elections		4,725
6	Publication of State Register		1,500
7	Rules and Regulations Division		25,000
8	Total	\$	532,407

9 The above appropriation for Rules and Regu-
 10 lations Division shall be expended for the
 11 implementation of Section 4, Article 3,
 12 Chapter 29A of the Code.

EDUCATIONAL

24—*State Department of Education*

Acct. No. 2770

1	Teacher Education Centers—Total	\$	140,000
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25—*West Virginia Board of Regents (Control)*

Acct. No. 2790

1	Personal Services	\$	96,451,291
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2	Current Expenses	21,298,451
3	Repairs and Alterations	1,020,400
4	Equipment	3,900,034
5	Bureau of Coal Research	1,068,152
6	National Research Center for Coal and Energy	1,334,997
7	Transportation—P.R.T.	1,189,949
8	Total	\$126,263,274

26—*West Virginia Board of Regents*

Acct. No. 2800

1	Personal Services	\$ 503,565
2	Current Expenses	178,567
3	Equipment	10,000
4	Scholarship Program	2,600,000
5	Tuition Contract Programs	720,000
6	Total	\$ 4,012,132

27—*West Virginia College of Osteopathic Medicine*

Acct. No. 2810

1	Personal Services	\$ 2,565,210
2	Current Expenses	454,000
3	Total	\$ 3,019,210

4 Any unexpended balance remaining in the ap-
 5 propriation for "Unclassified" at the close of
 6 the 1979-80 fiscal year is hereby reappropri-
 7 ated for expenditure during the fiscal year
 8 1980-81.

28—*Marshall University—Medical School*

Acct. No. 2840

1	Personal Services	\$ 1,867,706
2	Current Expenses	869,544
3	Repairs and Alterations	86,172
4	Equipment	116,500
5	Total	\$ 2,939,922

29—*West Virginia University—Medical School*

Acct. No. 2850

1	Personal Services	\$ 10,411,720
2	Current Expenses	5,475,917
3	Repairs and Alterations	428,000
4	Equipment	267,500
5	Family Practice Residency Support Program ..	457,960
6	Intern and Residency Support Program for	
7	Community Hospitals	944,542
		<hr/>
8	Total	\$ 17,985,639
9	To be transferred to the West Virginia Univer-	
10	sity—Medical School Fund upon the requi-	
11	sition of the Governor.	

30—*State Department of Education*

Acct. No. 2860

1	Personal Services	\$ 1,180,336
2	Current Expenses	631,950
3	Equipment	10,400
4	National Defense Education Act	555,212
	Personal Services	403,850
	Other Expenses	151,362
5	Statewide Testing Program	148,485
	Personal Services	58,650
	Other Expenses	89,835
6	Driver Education	216,000
7	Aid to Children's Home	50,000
8	Regional Education Service Agencies	440,000
9	Project 0629-061—Identification and Remedia-	
10	tion of Learning Disabilities	114,316
11	Project 0629-062—Diagnostic and Remedia-	
12	tion of Learning Disabilities	133,928
13	Early Learning and Child Care Systems—	
14	(Project Nos. 0629-067, 0629-077 and	
15	0629-078)	300,000
		<hr/>
16	Total	\$ 3,780,627

17 The above appropriation includes the State
18 Board of Education and their executive
19 offices.

20 Any part or all of the appropriation for "Na-
21 tional Defense Education Act" may be trans-
22 ferred to a Special Revenue Fund for the pur-
23 pose of matching Federal Funds for this
24 program.

31—*State Department of Education—School Lunch Program*

Acct. No. 2870

1 Personal Services	\$ 148,525
2 Current Expenses	14,071
3 Aid to Counties—Includes hot lunches and 4 canning for hot lunches	1,944,000
5 Total	\$ 2,106,596

32—*State Board of Education—Vocational Division*

Acct. No. 2890

1 Personal Services	\$ 239,671
2 Current Expenses	83,788
3 Equipment	6,000
4 Vocational Aid	8,948,145
5 Adult Basic Education	700,000
6 Replacement of Equipment	750,000
7 Equipment for New Vocational Facilities	375,000
8 Total	\$ 11,102,604

33—*State Department of Education—Professional Educators*

Acct. No. 2900

1 Total	\$ 90,756,904
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34—*Educational Broadcasting Authority*

Acct. No. 2910

1 Personal Services	\$ 72,264
2 Current Expenses	35,585
3 Equipment	5,000

4	Regional ETV	1,908,907
5	WVU—TV	887,550
6	Total	<u>\$ 2,909,306</u>

7 "Regional ETV" is for participation in the con-
 8 struction and operation of Regional ETV
 9 stations by Marshall University, Concord
 10 College, Bluefield State College, West Vir-
 11 ginia Institute of Technology and West
 12 Virginia State College, and the acquisition
 13 of a new FM radio station to serve the north-
 14 ern panhandle; and such funds may be trans-
 15 ferred to Special Revenue Accounts for
 16 matching County and/or Federal Funds.

35—*State Board of Education—Vocational Division*

Acct. No. 2940

1	Other Expenses—Total	\$ 546,500
2	Any unexpended balance remaining in this	
3	appropriation at the close of the fiscal year	
4	1979-80 is hereby reappropriated for expendi-	
5	ture during the fiscal year 1980-81.	

36—*State Department of Education—State Aid to Schools*

Acct. No. 2950

1	Professional Educators	\$229,073,740
2	Other Personnel	45,814,748
3	Fixed Charges	23,063,144
4	Transportation Charges	15,586,791
5	Administration	2,290,750
6	Other Current Expenses	27,488,849
7	National Average Attainment	28,986,884
8	Program Improvement	1,450,159
9	Increased Enrollment	250,000
10	Subtotal	<u>\$374,005,065</u>
11	Less Local Share	63,768,281
12	Total	<u>\$310,236,784</u>

37—*State Department of Education—Aid for Exceptional Children*

Acct. No. 2960

1	Personal Services	\$	231,300
2	Current Expenses		67,448
3	Out-of-State Instruction		428,000
4	Aids to Counties		6,800,000
	County Grant Awards	6,309,995	
	Regional Education Service		
	Agency Grants	212,000	
	Special State Projects	278,005	
5	Total	\$	7,526,748

6 The appropriation for "Out-of-State Instruc-
7 tion" may be expended to provide instruction,
8 care and maintenance for educable persons
9 who have multiple handicaps and for whom
10 the state provides no facilities.

11 The appropriation for "Aid to Counties" may
12 be expended for the initiation, maintenance
13 and/or improvement of special education
14 programs including: employment of new pro-
15 fessional education personnel solely serving
16 exceptional children; training of educational
17 personnel to work with exceptional children;
18 and supportive costs such as materials, trans-
19 portation, contracted services, minor re-
20 novation and other cost directly related to
21 the special education delivery process pre-
22 scribed by the State Board of Education.

38—*State Board of Education—Early Childhood Aides*

Acct. No. 2970

1	Early Childhood Aides—Total	\$	3,208,338
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39—*Teachers Retirement Board*

Acct. No. 2980

1	Teachers Retirement Fund	\$	32,000,000
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2	Supplemental Benefits for Annuitants	3,200,000
3	Total	\$ 35,200,000
4	The line item "Supplemental Benefits for	
5	Annuitants" may be transferred as required	
6	and shall be expended in accordance with	
7	the provisions of Enrolled Committee Substi-	
8	tute for House Bill No. 878, 1980 Regular Ses-	
9	sion of the Legislature.	

40—*State Department of Education*

Acct. No. 2990

1	To fund minimum salaries for Support	
2	Personnel—Total	\$ 42,630,269

41—*West Virginia Schools for the Deaf and the Blind*

Acct. No. 3330

1	Personal Services	\$ 2,484,304
2	Current Expenses	568,290
3	Repairs and Alterations	143,327
4	Equipment	97,621
5	Total	\$ 3,293,542

42—*State FFA-FHA Camp and Conference Center*

Acct. No. 3360

1	Personal Services	\$ 105,500
2	Current Expenses	25,000
3	Repairs and Alterations	19,500
4	Equipment	13,900
5	Total	\$ 163,900

43—*West Virginia Library Commission*

Acct. No. 3500

1	Personal Services	\$ 820,170
2	Current Expenses	182,936
3	Repairs and Alterations	3,500

4	Equipment	5,000
5	Grants-in-Aid	2,872,102
6	Books and Periodicals	232,000
		<hr/>
7	Total	\$ 4,115,708
8	Any unexpended balance remaining in the ap-	
9	propriation for "Library Matching Fund	
10	(Construction)" at the close of the fiscal year	
11	1979-80 is hereby reappropriated for expendi-	
12	ture during the fiscal year 1980-81.	

44—*Department of Culture and History*

Acct. No. 3510

1	Personal Services	\$ 940,863
2	Current Expenses	233,903
3	Repairs and Alterations	25,000
4	Equipment	35,000
5	Arts and Humanities Fund	450,839
	Personal Services	87,182
	Grants and Contractual	
	Services	363,657
6	Department Programming Funds	300,000
	Outreach and Education	75,000
	Technical Assistance	65,000
	Cultural Center Programs	160,000
7	Washington-Carver Camp	90,000
8	Grants, Fairs and Festivals	636,300
		<hr/>
9	Total	\$ 2,711,905

10 The above appropriations for "Arts and Hu-
 11 manities Fund," Department Programming
 12 Funds," "Grants, Fairs and Festivals" and
 13 "Washington-Carver Camp" shall be expend-
 14 ed only upon authorization of the Department
 15 of Culture and History and in accordance
 16 with the provisions of Chapter 5A and Chap-
 17 ter 12, Article 3 of the Code of West Virginia.

18 All Federal moneys received as reimbursement
 19 to the Science and Cultural Center for

20 moneys expended from the General Revenue
 21 Fund for Arts and Humanities are hereby
 22 reappropriated for the purposes as originally
 23 made, including Personal Services, Current
 24 Expenses and Equipment.

25 Any unexpended balance remaining in the
 26 appropriation for "Independence Hall,
 27 Wheeling, West Virginia" at the close of the
 28 fiscal year 1979-80 is hereby reappropriated
 29 for expenditure during the fiscal year 1980-81.

30 Any unexpended balance remaining in the ap-
 31 propriation "Washington-Carver Camp" at
 32 the close of the fiscal year 1979-80 is hereby
 33 reappropriated for expenditure during the
 34 fiscal year 1980-81.

CORRECTION

45—*Department of Corrections*
Probation and Parole

Acct. No. 3650

1	Salaries of Members of Board of		
2	Probation and Parole	\$	48,000
3	Other Personal Services		27,075
4	Current Expenses		21,534
5	Equipment		890
			<hr/>
6	Total	\$	97,499

46—*Department of Corrections*
Community Service
Northern Region

Acct. No. 3660

1	Personal Services	\$	416,924
2	Current Expenses		90,245
3	Repairs and Alterations		1,000
4	Equipment		500
			<hr/>
5	Total	\$	508,669

47—*Department of Corrections*
Community Service
Southern Region

Acct. No. 3670

1	Personal Services	\$	548,527
2	Current Expenses		131,031
3	Repairs and Alterations		1,000
4	Equipment		500
			5
	Total	\$	681,058

48—*Department of Corrections*

Acct. No. 3680

1	Salary of Commissioner	\$	30,000
2	Other Personal Services		420,996
3	Current Expenses		151,515
4	Repairs and Alterations		1,500
			5
	Total	\$	604,011

49—*Anthony Center*

Acct. No. 3690

1	Personal Services	\$	459,231
2	Current Expenses		128,824
3	Repairs and Alterations		3,000
4	Equipment		1,000
			5
	Total	\$	592,055

50—*West Virginia Industrial School for Boys*

Acct. No. 3700

1	Personal Services	\$	978,507
2	Current Expenses		322,955
3	Repairs and Alterations		20,000
4	Equipment		2,000
			5
	Total	\$	1,323,462

51—*Davis Center*

Acct. No. 3710

1	Personal Services	\$	406,719
2	Current Expenses		130,484
3	Repairs and Alterations		3,000
4	Equipment		800
			<hr/>
5	Total	\$	541,003

52—*West Virginia Industrial Home for Girls*

Acct. No. 3720

1	Personal Services	\$	430,203
2	Current Expenses		86,545
3	Repairs and Alterations		3,000
4	Equipment		500
			<hr/>
5	Total	\$	520,248

53—*Leckie Center*

Acct. No. 3730

1	Personal Services	\$	423,542
2	Current Expenses		133,782
3	Repairs and Alterations		3,000
4	Equipment		1,000
			<hr/>
5	Total	\$	561,324

54—*West Virginia State Prison for Women*

Acct. No. 3740

1	Personal Services	\$	381,534
2	Current Expenses		127,664
3	Repairs and Alterations		5,000
4	Equipment		1,000
			<hr/>
5	Total	\$	515,198

55—*West Virginia Penitentiary*

Acct. No. 3750

1	Personal Services	\$ 3,096,207
2	Current Expenses	1,394,809
3	Repairs and Alterations	30,000
4	Equipment	7,000
5	Prison Industries—Purchase of Equipment	35,000
6	Total	\$ 4,563,016

56—*Huttonsville Correctional Center*

Acct. No. 3760

1	Personal Services	\$ 1,960,955
2	Current Expenses	1,036,460
3	Repairs and Alterations	40,000
4	Equipment	7,000
5	Boiler Conversion to Coal	100,000
6	Total	\$ 3,144,415

HEALTH AND WELFARE

57—*State Health Department*

Acct. No. 3900

Administrative Services (3900)

1	Personal Services	\$ 1,029,149
2	Current Expenses	568,426
3	Equipment	22,000
4	Subtotal	1,619,575

Preventive Health Services (3905)

5	Personal Services	906,450
6	Current Expenses	685,263
7	Equipment	69,030
8	Subtotal	1,660,743

Maternal and Child Health (3915)

9	Personal Services	616,457
10	Current Expenses	1,453,992
		<hr/>
11	Subtotal	2,070,449

Environmental Health (3920)

12	Personal Services	898,114
13	Current Expenses	214,502
14	Equipment	25,905
		<hr/>
15	Subtotal	1,138,521

Behavioral Health Services (3965)

16	Personal Services	569,527
17	Current Expenses	1,278,919
18	Reimbursement to Community Mental Health	
19	and Mental Retardation Centers	13,496,196
20	Study of Rehabilitation Centers	50,000
21	Special Olympics	28,000
		<hr/>
22	Subtotal	15,422,642

Institutional Service (3935)

23	Personal Services	512,369
24	Current Expenses	130,720
25	Equipment	1,000
		<hr/>
26	Subtotal	644,089

Office of Chief Medical Examiner (3950)

27	Personal Services	353,485
28	Current Expenses	414,189
29	Repairs and Alterations	4,000
30	Equipment	15,000
		<hr/>
31	Subtotal	786,674

Health Planning and Evaluation (3970)

32	Personal Services	738,914
33	Current Expenses	144,653
34	Equipment	600
		<hr/>
35	Subtotal	884,167

Public Health Services (3975)

36	Personal Services	888,822
37	Current Expenses	653,633
38	Equipment	52,488
39	State Aid to Local	
40	Agencies	3,000,000
41	Grants to Counties and E.M.S	
42	Entities	1,948,051
43	Subtotal	6,542,994
44	Total	\$ 30,769,854

45 Any unexpended balance remaining in the
 46 appropriation for "Logan-Mingo Area Mental
 47 Health Center" at the close of the fiscal year
 48 1979-80 is hereby reappropriated for expendi-
 49 ture during the fiscal year 1980-81.

*58—Department of Veterans Affairs**Veterans Home*

Acct. No. 4010

1	Personal Services	\$ 277,729
2	Current Expenses	270,000
3	Repairs and Alterations	1,500,000
4	Equipment	302,000
5	Total	\$ 2,349,729

59—Solid Waste Disposal

Acct. No. 4020

1	Personal Services	\$ 76,781
2	Current Expenses	37,089
3	Equipment	500
4	Total	\$ 114,370

60—Department of Veterans Affairs

Acct. No. 4030

1	In aid of Veterans Day Patriotic Exercises	\$ 5,000
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- 2 To be expended subject to the approval of the
 3 Department of Veterans Affairs upon presen-
 4 tation of satisfactory plans by the Grafton G.
 5 A. R. Post, American Legion, Veterans of
 6 Foreign Wars and Sons of Veterans.

61—*Department of Veterans Affairs*

Acct. No. 4040

1	Personal Services	\$	551,029
2	Current Expenses		87,662
3	Equipment		3,000
4	Educational opportunities for children of War		
5	Veterans		10,000
			<hr/>
6	Total	\$	651,691

62—*Department of Welfare*

Acct. No. 4050

1	Personal Services	\$	10,419,997
2	Current Expenses		4,586,509
3	Equipment		55,875
4	Assistance Payments		17,257,363
5	Social Security Matching Fund		659,293
6	Social Services		15,551,131
7	Indigent Burials		540,000
8	Emergency Assistance		630,000
9	Medical Services		40,000,000
			<hr/>
10	Total	\$	89,699,968

- 11 Items 1, 2 and 3 above includes funds to be used
 12 for the West Virginia Childrens Home,
 13 Southern Regional Detention Center and
 14 West Central Regional Detention Center.

- 15 Item 6 above includes the funds to be used for
 16 juveniles in accordance with H. B. 1484,
 17 enacted by Acts of the Legislature, Regular
 18 Session, 1979.

19 None of the funds in item 9 above is to be used
 20 in funding the program known as the "Medi-
 21 caid for the Medically Needy" program.
 22 There shall be no transfers to this account
 23 or any item thereof of state appropriated
 24 revenues, except reimbursements, as such.

63—*State Commission on Aging*

Acct. No. 4060

1	Personal Services	\$	85,131
2	Current Expenses		55,186
3	Equipment		300
4	Programs for Elderly		1,900,000
5	Golden Mountaineer Program		175,000
6	Total	\$	2,215,617
7	Any unexpended balance remaining in the		
8	appropriation for "Senior Citizens Center" at		
9	the close of the fiscal year 1979-80 is hereby		
10	reappropriated for expenditure during the		
11	fiscal year 1980-81, with the purpose of such		
12	item to be redesignated: "Senior Citizens		
13	Center—land acquisition, construction, re-		
14	pairs or alterations."		

64—*Greenbrier School for Mentally Retarded Children*

Acct. No. 4140

1	Personal Services	\$	843,116
2	Current Expenses		215,283
3	Repairs and Alterations		35,000
4	Equipment		13,200
5	Total	\$	1,106,599

65—*State Health Department—Mental Hospitals*

Acct. No. 4160

1	Personal Services	\$	18,017,941
2	Current Expenses		5,221,940
3	Repairs and Alterations		589,626

4	Equipment	218,600
5	Student Nurse Affiliation Program	
6	(Huntington)	64,339
7	Psychiatric Training Center—Student Nurses	
8	(Weston)	185,798
9	Total	\$ 24,298,244

10 The director of health, prior to the beginning of
 11 the fiscal year, shall file with the legislative
 12 auditor an expenditure schedule for each
 13 formerly separate spending unit which has
 14 been consolidated into the above account and
 15 which receives a portion of the above appro-
 16 priation. He shall also, within fifteen days
 17 after the close of each six-month period of
 18 said fiscal year, file with the legislative
 19 auditor an itemized report of expenditures
 20 made during the preceding six-month period.
 21 Such report shall include the total of expend-
 22 itures made under each of line items 1, 2,
 23 3 and 4 above.

66—*Colin Anderson Center*

Acct. No. 4190

1	Personal Services	\$ 6,477,158
2	Current Expenses	913,100
3	Repairs and Alterations	150,000
4	Equipment	67,063
5	Total	\$ 7,607,321

67—*Fairmont Emergency Hospital*

Acct. No. 4250

1	Personal Services	\$ 708,053
2	Current Expenses	326,646
3	Repairs and Alterations	10,100
4	Equipment	27,130
5	Total	\$ 1,071,929

68—*Welch Emergency Hospital*

Acct. No. 4260

1	Personal Services	\$ 1,216,349
2	Current Expenses	347,773
3	Repairs and Alterations	38,000
4	Equipment	23,000
5	Total	\$ 1,625,122

69—*Andrew S. Rowan Memorial Home*

Acct. No. 4270

1	Personal Services	\$ 872,018
2	Current Expenses	499,720
3	Repairs and Alterations	40,000
4	Equipment	10,000
5	Total	\$ 1,421,738

70—*Hopemont Hospital*

Acct. No. 4300

1	Personal Services	\$ 3,522,827
2	Current Expenses	836,614
3	Repairs and Alterations	43,700
4	Equipment	55,900
5	Total	\$ 4,459,041

71—*Pinecrest Hospital*

Acct. No. 4310

1	Personal Services	\$ 3,127,918
2	Current Expenses	1,127,792
3	Repairs and Alterations	88,500
4	Equipment	24,300
5	Total	\$ 4,368,510

72—*Denmar Hospital*

Acct. No. 4320

1	Personal Services	\$ 2,280,956
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2	Current Expenses	708,640
3	Repairs and Alterations	60,150
4	Equipment	60,000
5	Total	\$ 3,109,746

73—*State Board of Education—Rehabilitation Division*

Acct. No. 4400

1	Personal Services	\$ 2,024,014
2	Current Expenses	506,657
3	Repairs and Alterations	819
4	Equipment	56,631
5	Rehabilitation Center	2,094,396
	Personal Services	1,613,300
	Current Expenses	457,246
	Equipment	23,850
6	Case Services	2,393,183
7	Social Security Matching Fund	209,307
8	W.V.U.—Reimbursements	50,000
9	Workshop Development	620,000
10	Blind Services Coordinating Unit	37,000
11	Total	\$ 7,992,007

BUSINESS AND INDUSTRIAL RELATIONS

74—*Bureau of Labor and Department of
Weights and Measures*

Acct. No. 4500

1	Personal Services	\$ 832,107
2	Current Expenses	220,329
3	Repairs and Alterations	16,000
4	Equipment	2,072
5	Labor Management Advisory Council	25,000
6	Total	\$ 1,095,508

75—*Interstate Mining Compact Commission*

Acct. No. 4510

1	Total	\$ 10,000
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76—*Department of Mines*

Acct. No. 4600

1	Personal Services	\$ 2,914,559
2	Current Expenses	906,904
3	Equipment	73,470
4	Miner Training, Education and Certification	118,407
5	Board of Coal Mine Health and Safety	115,000
6	Unclassified	191,735
7	Total	\$ 4,320,075
8	The above line item "Unclassified" shall be	
9	expended only for implementation of the pro-	
10	visions of Enrolled Senate Bill No. 385, 1979	
11	Regular Session of the Legislature.	

77—*Ohio River Basin Commission*

Acct. No. 4690

1	Total	\$ 21,000
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78—*Council of State Governments*

Acct. No. 4720

1	Total	\$ 31,800
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- 2 The Governor is authorized to use these funds
 3 for any other successor organization or suc-
 4 cessor organizations that may be created.

79—*Interstate Commission on Potomac River Basin*

Acct. No. 4730

1	West Virginia's contribution to Potomac	
2	River Basin Interstate Commission	\$ 12,450

80—*Ohio River Valley Water Sanitation Commission*

Acct. No. 4740

1	West Virginia's contribution to the Ohio River	
2	Valley Water Sanitation Commission	\$ 40,575

81—*Southern Regional Education Board*

Acct. No. 4750

1	West Virginia's contribution to Southern		
2	Regional Education Board	\$	64,000
3	To be expended upon requisition of the Gov-		
4	ernor.		

82—*West Virginia Air Pollution Control Commission*

Acct. No. 4760

1	Personal Services	\$	436,404
2	Current Expenses		171,768
3	Equipment		14,500
4	Total	\$	622,672

83—*Interstate Education Compact*

Acct. No. 4770

1	West Virginia's contribution to Interstate		
2	Education Compact	\$	21,375
3	To be expended upon requisition of the Gov-		
4	ernor.		

84—*Southern Interstate Nuclear Board*

Acct. No. 4780

1	West Virginia's contribution to the		
2	Southern Interstate Nuclear Board	\$	19,171
3	To be expended upon requisition of the Gov-		
4	ernor.		

85—*State Boxing Commission*

Acct. No. 4790

1	Total	\$	5,500
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86—*Department of Banking*

Acct. No. 4800

1	Personal Services	\$	424,945
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2	Current Expenses	231,328
3	Equipment	500
4	Total	\$ 656,773

87—*West Virginia State Aeronautics Commission*

Acct. No. 4850

1	Personal Services	\$ 56,714
2	Current Expenses	17,485
3	Equipment	1,500
4	Aerial Markers	4,500
5	Civil Air Patrol Expenses	89,000
6	Airport Matching	779,912
7	Total	\$ 949,111
8	Any unexpended balance remaining in the	
9	appropriation "Airport Matching Fund" at	
10	the close of the fiscal year 1979-80 is hereby	
11	reappropriated for expenditure during fiscal	
12	year 1980-81.	

88—*West Virginia Nonintoxicating
Beer Commissioner*

Acct. No. 4900

1	Personal Services	\$ 252,064
2	Current Expenses	75,204
3	Equipment	4,500
4	Total	\$ 331,768

89—*West Virginia Racing Commission*

Acct. No. 4950

1	Personal Services	\$ 662,203
2	Current Expenses	79,850
3	Equipment	5,000
4	Total	\$ 747,053

AGRICULTURE

90—Department of Agriculture

Acct. No. 5100

1	Salary of Commissioner	\$	35,428
2	Other Personal Services		1,648,219
3	Current Expenses		722,830
4	Equipment		26,800
5	Multiflora Rose Eradication Program		25,000
			<hr/>
6	Total	\$	2,458,277

7 Out of the above funds a sum may be used to
 8 match Federal Funds for the eradication and
 9 control of pest and plant disease.

91—Farm Management Commission

Acct. No. 5110

1	Personal Services	\$	894,307
2	Current Expenses		697,159
3	Repairs and Alterations		215,000
4	Equipment		477,323
			<hr/>
5	Total	\$	2,283,789

92—Department of Agriculture—
Soil Conservation Committee

Acct. No. 5120

1	Personal Services	\$	283,001
2	Current Expenses		68,753
3	Watershed Program		350,000
			<hr/>
4	Total	\$	701,754
5	Any unexpended balance remaining in the ap-		
6	propriation for "Watershed Program," "Mud		
7	River Flood Control Project," and "Chan-		
8	nelization of Kelley's Creek," hereinafter re-		
9	designated as "Stream Channelization," at		
10	the close of the fiscal year 1979-80 is hereby		

- 11 reappropriated for expenditure during the
12 fiscal year 1980-81.

93—*Department of Agriculture—Division of Rural Resources*
(*Matching Fund*)

Acct. No. 5130

1 Personal Services	\$	645,657
2 Current Expenses		153,000
3 Equipment		14,000
4 Total.....	\$	812,657

- 5 Any part or all of this appropriation may be
6 transferred to Special Revenue Fund for the
7 purpose of matching Federal Funds for the
8 above-named program.

94—*Department of Agriculture—Meat Inspection*

Acct. No. 5140

1 Personal Services	\$	325,560
2 Current Expenses		117,800
3 Total.....	\$	443,360

- 4 Any part or all of this appropriation may be
5 transferred to Special Revenue Fund for the
6 purpose of matching Federal Funds for the
7 above-named program.

95—*Department of Agriculture—Agricultural Awards*

Acct. No. 5150

1 Agricultural Awards	\$	70,000
2 Fairs and Festivals		134,450
3 Total	\$	204,450

CONSERVATION AND DEVELOPMENT

96—*Geological and Economic Survey*

Acct. No. 5200

1 Personal Services	\$	758,832
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2	Current Expenses	331,333
3	Repairs and Alterations	73,119
4	Equipment	73,540
5	Special Studies	636,361
6	Total	\$ 1,873,185

97—Department of Natural Resources

Acct. No. 5650

1	Personal Services	\$ 8,341,996
2	Current Expenses	1,493,725
3	Repairs and Alterations	136,120
4	Equipment	79,752
5	Fire Prevention Control	790,612
	Personal Services	710,000
	Other Expenses	80,612
6	Water Resources Board and Reclamation Board	
7	of Review	30,000
8	Debt Service	1,193,925
9	Total	\$ 12,066,130

10 Any unexpended balance remaining in the ap-
 11 propriations for "Little Beaver State Park,"
 12 "Watoga State Park," "Beartown State Park,"
 13 "Coopers Rock State Park," "Greenbrier State
 14 Forest," "Kanawha State Forest," Pleasants
 15 Creek Public Hunting and Fishing Area,"
 16 "Plum Orchard Lake Public Hunting and
 17 Fishing Area," "Panther State Forest,"
 18 "Bluestone State Park," "Improvement and
 19 land acquisition—Berwind Lake Public
 20 Hunting and Fishing Area," "Park Improve-
 21 ment Program," "Construction, Development
 22 and Improvement of Sewage system and
 23 water systems on state forests, parks and
 24 recreation areas," "Implementation of Federal
 25 Surface Mine Legislation," "Clean Water
 26 Act of 1977," "Repairs, Replacement of Equip-
 27 ment and Furnishings on Existing Facilities,"
 28 "Laurel Lake Public Hunting and Fishing,"

29 "Big Ugly Public Hunting Grounds," "Reeds
30 Creek Hatchery," "Castleman's Run Lake,"
31 and "Big Ditch-Improvements" at the close of
32 the fiscal year 1979-80 is hereby reappropri-
33 ated for expenditure during the fiscal year
34 1980-81.

35 Any or all funds appropriated for "Fire Preven-
36 tion Control" may be transferred to Special
37 Revenue Fund to match and aid Federal
38 Funds.

98—*Public Land Corporation*

Acct. No. 5660

1 Any unexpended balance remaining in the ap-
2 propriations for "Public Land Corporation,"
3 "Blennerhassett Island" and "National Track
4 and Field Hall of Fame" at the close of the
5 fiscal year 1979-80 is hereby reappropriated
6 for expenditure during the fiscal year 1980-81.

7 The appropriation for "National Track and
8 Field Hall of Fame," as designated in Chap-
9 ter 8, Acts of the Legislature, First Extraor-
10 dinary Session, 1975, is hereby redesignated
11 as follows: The purpose of this bill is to
12 provide state General Revenue moneys to
13 match Federal Funds, county funds, municip-
14 al funds, board of education funds, or any
15 combination thereof, for the establishment
16 of the "National Track and Field Hall of
17 Fame." Such moneys may be transferred
18 to a special fund to match and aid Federal
19 Funds or other of the aforesaid funds and for
20 disbursement therefrom.

99—*Water Development Authority*

Acct. No. 5670

1 Personal Services	\$	135,903
2 Current Expenses		59,419
3 Construction Grants—Phase III		3,000,000

4	Hardship Grants	1,000,000
5	Total.....	\$ 4,195,322

6 Any unexpended balance remaining in the ap-
 7 propriation for "Capital Outlay" and "Phase
 8 III Hardship Grants" at the close of the fiscal
 9 year 1979-80 is hereby reappropriated for
 10 expenditure during the fiscal year 1980-81.

100—*West Virginia Railroad Maintenance Authority*

Acct. No. 5690

1	Personal Services	\$ 97,013
2	Current Expenses	40,560
3	South Branch Valley Railroad	
4	(Unclassified)	500,000
5	Greenbrier Line Purchase	650,000
6	Total.....	\$ 1,287,573

7 The moneys appropriated in the item in this
 8 account for "South Branch Valley Railroad"
 9 purposes may be transferred to special rev-
 10 enue account No. 8344 for expenditure and
 11 disbursement therefrom.

12 Any unexpended balance remaining in the
 13 appropriation for "South Branch Valley Rail-
 14 road" (Bridge Renovation and Shop Con-
 15 struction) at the close of the fiscal year 1979-
 16 80 is hereby reappropriated for expenditure
 17 during the fiscal year 1980-81.

PROTECTION

101—*Department of Public Safety*

Acct. No. 5700

1	Personal Services	\$ 12,255,422
2	Current Expenses	5,108,599
3	Repairs and Alterations	244,000
4	Equipment	1,844,040

5	Emergency Fund	10,000
6	Chemistry Lab Addition	200,000
7	Total	<u>\$ 19,662,061</u>

102—*Adjutant General—State Militia*

Acct. No. 5800

1	Personal Services	\$ 208,123
2	Current Expenses	460,746
3	Repairs and Alterations	39,000
4	Equipment	4,000
5	Compensation of Commanding Officers, Clerical	
6	Allowances and Uniform Allowances	102,035
7	Property Maintenance	701,517
8	State Armory Board	2,000,000
9	College Education Fund	123,000
10	Total	<u>\$ 3,638,421</u>

MISCELLANEOUS BOARDS AND COMMISSIONS

103—*West Virginia Civil Service System*

Acct. No. 5840

1	Personal Services	\$ 666,127
2	Current Expenses	275,250
3	Equipment	4,000
4	Total	<u>\$ 945,377</u>

5 The director shall maintain accurate records
6 reflecting the cost of administering the provi-
7 sions of this appropriation. At the close of
8 each quarter-year period, he shall summarize
9 the cost and shall bill each department, com-
10 mission, board or agency which receives sup-
11 port from any funds other than General
12 Revenue Fund for a prorata share of the ad-
13 ministrative cost based on the relationship
14 between the quarterly-average number of
15 employees in the service of such department,
16 commission, board or agency and the quar-

17 terly-average number of employees in the
 18 service of all the departments, commissions,
 19 boards and agencies of the state for the
 20 appropriate calendar quarter.

21 This reimbursement is to be deposited in the
 22 General Revenue Fund.

104—*West Virginia State Board of Land Surveyors*

Acct. No. 5850

1 To pay the per diem of members and		
2 other general expenses	\$	15,000
3 From Collections		15,000

105—*State Board of Professional Foresters*

Acct. No. 5860

1 To pay the per diem of members and		
2 other general expenses	\$	1,400
3 From Collections		1,400

106—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 5870

1 To pay the per diem of members and		
2 other general expenses	\$	78,000
3 From Collections		78,000

107—*State Board of Chiropractic Examiners*

Acct. No. 5880

1 To pay the per diem of members and		
2 other general expenses	\$	4,720
3 From Collections		4,720

108—*State Board of Pharmacy*

Acct. No. 5900

1 To pay the per diem of members and		
2 other general expenses	\$	75,000
3 From Collections		75,000

109—*State Board of Osteopathy*

Acct. No. 5910

1 To pay the per diem of members and		
2 other general expenses	\$	8,000
3 From Collections		8,000

110—*State Board of Embalmers and Funeral Directors*

Acct. No. 5930

1 To pay the per diem of members and		
2 other general expenses	\$	42,115
3 From Collections		42,115

111—*State Board of Registration for Professional Engineers*

Acct. No. 5940

1 To pay the per diem of members and		
2 other general expenses	\$	97,000
3 From Collections		97,000

112—*State Board of Architects*

Acct. No. 5950

1 To pay the per diem of members and		
2 other general expenses	\$	16,000
3 From Collections		16,000

113—*State Veterinary Board*

Acct. No. 5960

1 To pay the per diem of members and		
2 other general expenses	\$	4,000
3 From Collections		4,000

114—*Human Rights Commission*

Acct. No. 5980

1 Personal Services	\$	289,093
2 Current Expenses		126,023

3	Equipment	3,599
4	Total	\$ 418,715

115—*West Virginia State Board of Sanitarians*

Acct. No. 5990

1	To pay the per diem of members and other	
2	general expenses	\$ 1,750
3	From Collections	1,750

116—*Women's Commission*

Acct. No. 6000

1	Personal Services	\$ 18,500
2	Current Expenses	11,505
3	Total	\$ 30,005

117—*West Virginia Public Employees Retirement Board*

Acct. No. 6140

1	Employers Accumulation Fund	\$ 9,500,000
2	Expense Fund	125,000
3	Supplemental Benefits for Annuitants	1,700,000
4	Total	\$ 11,325,000

5 The above appropriation is intended to cover
 6 the state's share of West Virginia Public Em-
 7 ployees Retirement coverage for those de-
 8 partments operating from General Revenue
 9 Fund. The State Department of Highways,
 10 Department of Motor Vehicles, Workmen's
 11 Compensation Commission, Public Service
 12 Commission and other departments operating
 13 from Special Revenue Funds and/or Federal
 14 Funds shall pay their proportionate share of
 15 the retirement costs for their respective divi-
 16 sions. When specific appropriations are not
 17 made, such payments may be made from the
 18 balance in the various Special Revenue Funds
 19 in excess of specific appropriations.

20 The line item "Supplemental Benefits for An-
 21 nuitants" may be transferred as required and
 22 shall be expended in accordance with the
 23 provisions of Enrolled Committee Substitute
 24 for House Bill No. 904, 1980 Regular Session
 25 of the Legislature.

118—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

1	Expense Fund	\$	113,000
2	Public Employees Health Insurance—		
3	State Contribution		37,350,000
			<hr/>
4	Total	\$	37,463,000

5 The above appropriation is intended to cover
 6 the state's share of Public Employees Health
 7 Insurance costs for those spending units
 8 operating from General Revenue Fund. The
 9 State Department of Highways, Department
 10 of Motor Vehicles, Workmen's Compensation
 11 Commission, Public Service Commission and
 12 other departments operating from Special
 13 Revenue Funds and/or Federal Funds shall
 14 pay their proportionate share of the Public
 15 Employees Health Insurance cost for their
 16 respective divisions. When specific appro-
 17 priations are not made, such payments may
 18 be made from the balances in the various
 19 Special Revenue Funds in excess of specific
 20 appropriations.

119—*Insurance Commissioner*

Acct. No. 6160

1	Personal Services	\$	519,017
2	Current Expenses		129,454
3	Equipment		15,000
			<hr/>
4	Total	\$	663,471

120—*State Fire Commission*

Acct. No. 6170

1	Personal Services	\$ 479,355
2	Current Expenses	199,495
3	Repairs and Alterations	3,048
4	Equipment	15,470
5	Total	\$ 697,368

121—*State Department of Highways*

Acct. No. 6410

1 Unclassified—Total \$ 35,500,000

2 Any or all of the above appropriations may be
 3 transferred to the State Road Fund for dis-
 4 tribution.

1 **Sec. 2. Appropriations from other funds.—**
 2 From the funds designated there are hereby
 3 appropriated conditionally upon the fulfill-
 4 ment of the provisions set forth in Chapter
 5 5A, Article 2 of the Code of West Virginia,
 6 the following amounts, as itemized, for ex-
 7 penditure during the fiscal year one thousand
 8 nine hundred eighty-one:

122—*State Department of Highways*

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance Expressway, Trunkline and	
2	Feeder	\$ 48,151,000
3	Maintenance State Local Services	52,843,000
4	Inventory Revolving	1,500,000
5	Equipment Revolving	7,000,000
6	General Operations	17,100,000
7	Debt Service	85,900,000
8	Interstate Construction	211,000,000
9	Other Federal Aid Programs	100,500,000

10	Appalachian Program	122,000,000
11	Nonfederal Aid Construction	28,995,000
12	Total	<u>\$674,989,000</u>

13 The above appropriated line items are to be
 14 expended in accordance with the provisions
 15 of Chapters 17 and 17C, Code of West Vir-
 16 ginia, one thousand nine hundred thirty-one,
 17 as amended.

18 The State Commissioner of Highways shall
 19 have the authority to operate revolving funds
 20 within the state road fund for the operation
 21 and purchase of various types of equipment
 22 used directly and indirectly in the construc-
 23 tion and maintenance of roads and for the
 24 purchase of inventories and materials and
 25 supplies.

26 There is hereby appropriated within the above
 27 items sufficient money for the payment of
 28 claims, accrued or arising during this budge-
 29 tary period, to be paid in accordance with
 30 Chapter 14, Article 2, Sections 17 and 18,
 31 Code of West Virginia, one thousand nine
 32 hundred thirty-one, as amended.

123—*Department of Motor Vehicles*

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 1,856,314
2	Current Expenses	2,506,091
3	Equipment	35,000
4	Purchase of License Plates	496,700
5	Social Security Matching	112,722
6	Public Employees Retirement Matching	177,173
7	Public Employees Health Insurance	111,898
8	Total	<u>\$ 5,295,898</u>

124—State Tax Department—Gasoline Tax Division

Acct. No. 6720

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	440,145
2	Current Expenses		190,455
3	Equipment		3,500
4	Total	\$	634,100

125—Department of Education—Veterans Education

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	156,408
2	Other Expenses		96,916
3	Total	\$	253,324

4 Expenditures from this appropriation shall not
 5 exceed the amount to be reimbursed by the
 6 federal government.

7 Federal Funds in excess of the amounts hereby
 8 appropriated may be made available by
 9 budget amendment upon request of the State
 10 Superintendent of Schools and approval of
 11 the Governor for any emergency which
 12 might arise in the operation of this division
 13 during the fiscal year.

126—Treasurer's Office—Abandoned and Unclaimed Property

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	46,219
2	Other Expenses		33,581
3	Total	\$	79,800

127—*Real Estate Commission*

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	100,746
2	Current Expenses		40,816
3	Equipment		4,650
4	Social Security Matching		6,115
5	Public Employees Retirement Matching		9,476
6	Public Employees Health Insurance		4,264
			<hr/>
7	Total	\$	166,067
8	The total amount of this appropriation shall be		
9	paid out of collections of license fees as pro-		
10	vided by law.		

128—*West Virginia Racing Commission*

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	5,000
---	------------------------	----	-------

2 The total amount of this appropriation shall be
 3 paid from Special Revenue Fund out of col-
 4 lections of license fees and fines as provided
 5 by law.

6 No expenditures shall be made from this ac-
 7 count except for hospitalization, medical
 8 care and/or funeral expenses for persons
 9 contributing to this fund.

129—*Auditor's Office—Land Department Operating Fund*

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total	\$	12,000
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2 The total amount of this appropriation shall be

- 3 paid from Special Revenue Fund out of fees
4 and collections as provided by law.

130—*Department of Finance and Administration—
Division of Purchasing—Revolving Fund*

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$ 657,728
2 Current Expenses	263,996
3 Equipment	22,000
4 Social Security Matching	42,255
5 Public Employees Retirement Matching	48,181
6 Public Employees Health Insurance	47,691
7 Total	\$ 1,081,851

8 The total amount of this appropriation shall
9 be paid from Special Revenue Fund as pro-
10 vided by Chapter 5A, Article 2 of the Code
11 of West Virginia.

12 The above appropriation includes salaries and
13 operating expenses.

14 There is hereby appropriated from this fund, in
15 addition to the above appropriation, the
16 necessary amount for the purchase of sup-
17 plies for resale.

131—*Department of Finance and Administration
Information Systems Service Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$ 2,723,776
2 Current Expenses	4,898,316
3 Equipment	67,500
4 Social Security Matching	165,327
5 Public Employees Retirement Matching	224,931
6 Public Employees Health Insurance	133,587
7 Total	\$ 8,213,437

- 8 The total amount of this appropriation shall be
 9 paid from Special Revenue Fund out of col-
 10 lections made by the Department of Finance
 11 and Administration as provided by law.

132—*Department of Agriculture*

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	340,332
2	Current Expenses		18,680
3	Social Security Matching		20,000
4	Public Employees Retirement Matching		32,000
5	Public Employees Health Insurance		12,744
6	Total	\$	423,756

- 7 The total amount of this appropriation shall be
 8 paid from Special Revenue Fund out of col-
 9 lections made by the Department of Agricul-
 10 ture as provided by law.

133—*State Committee of Barbers and Beauticians*

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	103,640
2	Current Expenses		78,200
3	Equipment		1,000
4	Total	\$	182,840

- 5 The total amount of this appropriation shall be
 6 paid from Special Revenue Fund out of col-
 7 lections made by the State Committee of Bar-
 8 bers and Beauticians as provided by law.

134—*Public Service Commission*

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	77,900
2	Other Personal Services		2,612,120

3	Current Expenses	913,790
4	Equipment	120,000
5	Social Security Matching	162,268
6	Public Employees Retirement Matching	262,708
7	Public Employees Health Insurance	113,117
8	Consumer Advocate	275,000
9	Total	<u>\$ 4,536,903</u>

10 The total amount of this appropriation shall be
 11 paid from Special Revenue Fund out of col-
 12 lections for special license fees from public
 13 service corporations as provided by law.

14 Out of the above appropriation \$5,000 may be
 15 transferred to the State Water Resources
 16 Commission of the Department of Natural
 17 Resources for use in cooperation with the
 18 U. S. Geological Survey in a program of
 19 stream gauging.

135—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 150,153
2	Current Expenses	74,030
3	Equipment	3,500
4	Social Security Matching	7,370
5	Public Employees Retirement Matching	14,520
6	Public Employees Health Insurance	6,270
7	Total	<u>\$ 255,843</u>

8 The total amount of this appropriation shall be
 9 paid from Special Revenue Fund out of re-
 10 cepts collected for or by the Public Service
 11 Commission pursuant to and in the exercise
 12 of regulatory authority over pipeline com-
 13 panies.

136—*Public Service Commission—Motor Carrier Division*

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 837,139
2	Current Expenses	346,200
3	Equipment	7,500
4	Social Security Matching	53,020
5	Public Employees Retirement Matching	79,448
6	Public Employees Health Insurance	46,915
7	Total	\$ 1,370,222

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund out of
 10 receipts collected for or by the Public Service
 11 Commission pursuant to and in the exercise
 12 of regulatory authority over motor carriers
 13 as authorized by law.

137—*Department of Natural Resources*

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 2,833,016
2	Current Expenses	1,509,022
3	Repairs and Alterations	107,896
4	Equipment	159,097
5	Land Purchase and Buildings	481,500
6	Total	\$ 5,090,531

7 The total amount of this appropriation shall be
 8 paid from Special Revenue Fund out of fees
 9 collected by the Department of Natural
 10 Resources. Expenditures shall be limited to
 11 the amounts appropriated except for Federal
 12 Funds received and Special Funds collected
 13 at state parks. Any unexpended balances
 14 remaining in the prior appropriation item
 15 "Land Purchase and Buildings" at the close

16 of fiscal year 1979-80 and available for capital
 17 improvements and land purchase purposes
 18 are hereby appropriated for expenditure in
 19 fiscal year 1980-81, all in accordance with
 20 Chapter 20, Article 2, Section 34, Code of
 21 West Virginia.

138—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	371,836
2 Current Expenses		162,056
3 Repairs and Alterations		8,700
4 Equipment		21,000
5 Social Security Matching		2,996
6 Public Employees Health Insurance		20,700
7 Total	\$	587,288

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund out of
 10 fees collected for inspection stickers as pro-
 11 vided by law.

139—*Board of Regents—West Virginia University—
 Special Capital Improvement Fund*

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service	\$	540,092
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2 The total amount of this appropriation shall be
 3 paid from the nonrevolving Capital Improve-
 4 ment Fund created by the 1959 Legislature,
 5 as amended.

6 Any unexpended balances remaining in the ap-
 7 propriations for "Creative Arts" at the close
 8 of the fiscal year 1979-80 are hereby reap-
 9 propriated for expenditure during fiscal year
 10 1980-81.

140—*Board of Regents—State System Registration Fee
Special Capital Improvements Fund
(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

- | | | | |
|---|--|----|-----------|
| 1 | Debt Service and Debt Service Reserve | \$ | 2,263,735 |
| 2 | Marshall University Campus Development | | 5,000,000 |
| 3 | (Addition to Science Building and continu- | | |
| 4 | ing property purchase) | | |
| 5 | Capital Building Repairs and Alterations | | 2,000,000 |
| 6 | (Supplements operating budgets at colleges | | |
| 7 | and universities) | | |
- 8 The total amount of this appropriation shall
9 be paid from the Special Capital Improve-
10 ment Fund created by the 1971 Legislature.
11 Projects are to be paid on a cash basis and
12 made available from the date of passage.
- 13 Any unexpended balances remaining in prior
14 years' and 1979-80 appropriations are hereby
15 reappropriated for expenditure during fiscal
16 year 1980-81, with the exception of accounts
17 8835-12 and 8835-14 which will expire on
18 June 30, 1980.

141—*Board of Regents—Special Capital Improvement Fund*

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

- | | | | |
|---|--------------------|----|-----------|
| 1 | Debt Service | \$ | 1,674,958 |
|---|--------------------|----|-----------|
- 2 The total amount of this appropriation shall
3 be paid from the nonrevolving Capital Im-
4 provement Fund created by the 1959 Legisla-
5 ture, as amended.
- 6 Any unexpended balances remaining in prior
7 years' and 1979-80 appropriations are hereby
8 reappropriated for expenditure during fiscal
9 year 1980-81, with the exception of the fol-

- 10 lowing accounts, which shall expire on June
11 30, 1980: 8840-10, 8840-47, 8840-56 and 8840-61.

142—*Board of Regents—State System Registration Fee
Revenue Bond Construction Fund*

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

- 1 Any unexpended balances remaining in prior
2 years' and 1979-80 appropriations are hereby
3 reappropriated for expenditure during the
4 fiscal year 1980-81.

143—*Board of Regents—State System Tuition Fee
Special Capital Improvement Fund*

(*Capital Improvement and Bond Retirement Fund*)

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve	\$ 4,531,101
2 College of Agriculture and Forestry	
3 Livestock Teaching and Research	
4 Facilities	50,000
5 Miscellaneous Campus Development Projects ..	950,000
6 West Virginia Northern Community College	
7 Campus Development	229,000
8 (Exercise purchase option on New	
9 Martinsville facility)	
10 West Liberty State College Campus	
11 Development	310,000
12 (Major items of equipment for the Dental	
13 Hygiene Program)	
14 West Virginia University Campus Develop-	
15 ment	2,000,000
16 (Cost escalation—current projects)	
17 West Virginia Institute of Technology Campus	
18 Development	1,000,000
19 (Engineering and Science Buildings—renova-	
20 tion and major items of equipment)	
21 West Virginia State College Campus Develop-	
22 ment	2,000,000

23 (Miscellaneous improvements and Library ad-
 24 dition in accordance with Campus Master
 25 Plan)
 26 Miscellaneous Campus Development
 27 Projects 750,000

28 The total amount of this appropriation shall be
 29 paid from the Special Capital Improvement
 30 Fund created by the 1977 Legislature. Proj-
 31 ects are to be paid on a cash basis and made
 32 available from the date of passage.

33 Any unexpended balances remaining in prior
 34 years' and in the 1979-80 appropriations are
 35 hereby reappropriated for expenditure in
 36 fiscal year 1980-81.

144—*Board of Regents—State System Tuition Fee
 Revenue Bond Construction Fund*

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior
 2 years' and 1979-80 appropriations are hereby
 3 reappropriated for expenditure during fiscal
 4 year 1980-81.

145—*Workmen's Compensation Commission*

Acct. No. 9000

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Personal Services	\$ 3,847,916
2 Current Expenses	3,021,300
3 Repairs and Alterations	5,000
4 Equipment	89,024
5 Social Security Matching	229,500
6 Public Employees Retirement Matching	355,674
7 Public Employees Health Insurance	224,583
8 Total.....	\$ 7,772,997

9 There is hereby authorized to be paid out of

10 the above appropriation for "Current Ex-
 11 penses" the amount necessary for the
 12 premiums on bonds given by the State Treas-
 13 urer as Bond Custodian for the protection
 14 of the Workmen's Compensation Fund. This
 15 sum shall be transferred to the Board of In-
 16 surance.

146—*West Virginia Alcohol Beverage Control Commission*

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Commissioner	\$ 30,000
2 Other Personal Services	8,306,817
3 Current Expenses	4,328,403
4 Repairs and Alterations	50,500
5 Equipment	212,000
6 Social Security Matching	538,618
7 Public Employees Retirement Matching	800,762
8 Public Employees Health Insurance	718,959
9 Total.....	<u>\$ 14,986,059</u>

10 The total amount of this appropriation shall
 11 be paid from Special Revenue Fund out of
 12 liquor revenues.

13 The above appropriations include the salaries
 14 of store personnel, store inspectors, store
 15 operating expenses and equipment; and sal-
 16 aries, expenses and equipment of administra-
 17 tion offices.

18 There is hereby appropriated from liquor rev-
 19 enues, in addition to the appropriation, the
 20 necessary amount for the purchase of liquor
 21 as provided by law.

147—*West Virginia University—Medical School*

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Personal Services	\$ 37,961,909
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2	Current Expenses	23,221,527
3	Repairs and Alterations	1,746,740
4	Equipment	2,544,940
5	Intern and Residency Support Program for	
6	Community Hospitals	944,542
7	Family Practice Residency Support Program	777,047
8	Total	\$ 67,196,705

- 1 **Sec. 3. Supplemental and deficiency appropriations.**—
 2 From the State Fund, General Revenue, except as other-
 3 wise provided, there are hereby appropriated the following
 4 amounts, as itemized, for expenditure during the fiscal
 5 year one thousand nine hundred eighty, to supplement the
 6 1979-80 appropriations and to be available for expenditure
 7 upon date of passage.

148—*Department of Welfare*

Acct. No. 4050

1	Public Assistance Grants	\$ 500,000
2	Direct Medical Services	7,500,000
3	Total	\$ 8,000,000

- 1 **Sec. 4. Reappropriations.**—Any unexpended balances of
 2 Items V, VI, VIII and IX in the appropriations made
 3 by and under the authority of Sec. 4 of the 1972 Budget
 4 Act and amended under Sec. 4 of the 1977 Budget Act
 5 are hereby reappropriated for expenditure during the
 6 fiscal year 1980-81 with exception of the following ac-
 7 counts: Item I, Acct. No. 3331-10, Item VI, Acct. No. 4221-15,
 8 Item VII, Acct. No. 4321-16, 4321-17, 3761-15, 3721-15, 3711-
 9 15, 3701-16, Item IX, Acct. No. 5651-46, 5651-54 and 5651-36,
 10 Item X, Acct. No. 3361-15 and Item XII Acct. No. 4103-15.

- 11 Any unexpended balances of Items II, III, IV, IX, XII,
 12 XIII, XV, XVI and XVII in the appropriations made by
 13 and under the authority of Sec. 4 of the 1973 Budget Act
 14 and amended under Sec. 4 of the 1977 Budget Act are
 15 hereby reappropriated for expenditure during the fiscal
 16 year 1980-81 with exception of the following accounts:
 17 Item I, Acct. No. 3331-13, 3331-15, Item II, Acct. No. 4191-17,

18 Item XII, Acct. No. 6500-07, 6500-11, 6500-12, Item XIII,
 19 Acct. No. 3701-22, 3721-17, 3721-20, 3721-23, 3721-24, 3721-25,
 20 3751-16, 3751-17, 3751-18, 3761-16, 3761-17 and Item XV,
 21 Acct. No. 5651-67.

22 Any unexpended balances of Items I, III and IV in the
 23 appropriation made by and under Sec. 4 of the 1976 Budget
 24 Act are hereby reappropriated for expenditure during the
 25 fiscal year 1980-81 with exception of the following accounts:
 26 Item III, Acct. No. 5651-07 and Item IX, Acct. No. 5651-15.

27 Any unexpended balance made by and under the pro-
 28 visions of Chapter 21, Acts of the Legislature, regular
 29 session, one thousand nine hundred seventy-seven, to Acct.
 30 No. 5650-30—Greenbrier State Forest—Picnic Area Im-
 31 provements—is hereby redesignated to the purpose:

32 Greenbrier State Forest:

33 "Improvements, including completion of picnic area, im-
 34 provement of potable water system for campground, re-
 35 pair of storm damaged electric utility and construction
 36 of a rest room."

1 **Sec. 5. Appropriations from revenue sharing trust fund.**

2 —The following items are hereby appropriated from the
 3 Revenue Sharing Trust Fund to be available for expendi-
 4 ture during the fiscal year 1980-81.

149—*Revenue Sharing Trust Fund*

Governor's Office

Acct. No. 9721

1 Partnership Grants—Volunteer Fire Depart-	
2 ments	\$ 1,500,000
3 Partnership Grants	2,000,000
4 Mingo County Sheltered Workshop	75,000

150—*Revenue Sharing Trust Fund*
Department of Finance and Administration

Acct. No. 9740

1 TRIP—Operations	\$ 350,000
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151—*Revenue Sharing Trust Fund*
Department of Welfare

Acct. No. 9775

1 TRIP—Tickets\$ 624,000

152—*Revenue Sharing Trust Fund*
Department of Highways

Acct. No. 9705

1 Maintenance State Local Services\$ 11,000,000

153—*Revenue Sharing Trust Fund*
State Health Department

Acct. No. 9715

1 Wirt County Health Department\$ 25,000

2 Colin Anderson Center—Capital Outlay 130,000

154—*Revenue Sharing Trust Fund*
State Board of Education—
Vocational Division

Acct. No. 9780

1 Capital Outlay—Brooke County\$ 500,000

155—*Revenue Sharing Trust Fund*
Department of Agriculture

Acct. No. 9771

1 Capital Outlay—Hardy County\$ 300,000

2 Capital Outlay—Beckley Farmers Market 15,000

3 Capital Outlay—Inwood Market 40,000

4 Upper Buffalo Fork 90,000

5 Soak Creek Watershed Project 150,000

156—*Revenue Sharing Trust Fund*
Department of Natural Resources

Acct. No. 9725

1 State Parks—Capital Outlay\$ 700,000

157—*Revenue Sharing Trust Fund*
Department of Corrections

Acct. No. 9719

1 Capital Outlay—Davis Center \$ 130,000

158—*Revenue Sharing Trust Fund*
Department of Culture and History

Acct. No. 9750

1 Mountain State Forest Festival \$ 32,700
 2 Sunrise Museum 50,000
 3 Oglebay Park 75,000
 4 Pt. Pleasant Battlefield (Capital Outlay) 30,000

159—*Revenue Sharing Trust Fund*
Board of Regents

Acct. No. 9745

1 Jackson's Mill 4-H Camp—Replace and install
 2 livestock weighing scales\$ 15,000

1 **Sec. 6. Appropriations from countercyclical fiscal assis-**
 2 **tance trust fund.**—Moneys received by the State of West
 3 Virginia pursuant to the provisions of the "Public Works
 4 Employment Act of 1976; Title II of Public Law 94-369," as
 5 amended by the "Intergovernmental Antirecession Assis-
 6 tance Act of 1977; Public Law 95-30," enacted by the
 7 Congress of the United States, shall be deposited in the
 8 state treasury and kept in a separate account entitled
 9 "Countercyclical Fiscal Assistance Trust Fund."

10 Any part of or all such amounts as deposited, including
 11 deposits through fiscal year one thousand nine hundred
 12 eighty-one, are hereby appropriated and may be trans-
 13 ferred to any other account in the Governor's Office or to
 14 any other departments of state government for disburse-
 15 ment or expenditure.

1 **Sec. 7. Reappropriations—Revenue Sharing Trust Fund.**
 2 —Any unexpended balances to the appropriations made
 3 by and under Sec. 8 of the 1973 Budget Act, and Sup-
 4 plementary Acts to Chapter 10, acts of the Legislature,

5 Regular Session 1973, under Sec. 5 of the 1974 Budget Act,
6 and Supplementary Acts to Chapter 2, acts of the
7 Legislature, Regular Session 1975, under Sec. 7, acts of
8 the Legislature, Regular Session 1976 and Supplementary
9 acts of Chapter 7, acts of the Legislature, Regular Session
10 1976, and as amended in Sec. 7 of the 1977 Budget Act,
11 1978 Budget Act and the 1979 Budget Act, at the close
12 of the fiscal year 1979-80 are hereby appropriated for
13 expenditure during the fiscal year 1980-81, with ex-
14 ception of the following accounts: Acct. Nos. 9705-06, 9705-
15 07, 9715-05, 9725-06, 9725-32, 9725-45, 9735-05, 9745-05, 9745-
16 17 and 9771-11.

17 Any unexpended balance made by and under the pro-
18 visions of Sec. 5 of the 1979 Budget Act in the appropria-
19 tion "Acct. No. 9715—Pinecrest State Hospital" is hereby
20 redesignated to the purpose: "Pinecrest State Hospital—
21 repair, renovation and equipment of existing facility."

1 **Sec. 8. Special revenue appropriations.**—There is here-
2 by appropriated for expenditure during the fiscal year one
3 thousand nine hundred eighty-one, appropriations made by
4 general law from special revenue which are not paid into
5 the state fund as general revenue under the provisions of
6 Chapter 12, Article 2, Section 2 of the Code of West Vir-
7 ginia, one thousand nine hundred thirty-one: *Provided,*
8 *however,* That none of the moneys so appropriated by this
9 section shall be available for expenditure except in com-
10 pliance with and in conformity to the provisions of Chapter
11 12, Articles 2 and 3, and Chapter 5A, Article 2 of the Code
12 of West Virginia, unless the spending unit has filed with
13 the state director of the budget, the State Auditor and the
14 legislative auditor prior to the beginning of each fiscal
15 year:

16 (a) An estimate of the amount and sources of all reve-
17 nues accruing to such fund.

18 (b) A detailed expenditure schedule showing for what
19 purposes the fund is to be expended.

1 **Sec. 9. State improvement fund appropriations.**—Be-
2 quests or donations of nonpublic funds, received by the

3 Governor on behalf of the state during the fiscal year one
4 thousand nine hundred eighty-one, for the purpose of mak-
5 ing studies and recommendations relative to improvements
6 of the administration and management of spending units
7 in the executive branch of state government, shall be
8 deposited in the state treasury in a separate account there-
9 in designated "State Improvement Fund."

10 There are hereby appropriated all moneys so deposited
11 during the fiscal year one thousand nine hundred eighty-
12 one, to be expended as authorized by the Governor, for
13 such studies and recommendations which may encompass
14 any problems of organization, procedures, systems, func-
15 tions, powers or duties of a state spending unit in the
16 executive branch or the betterment of the economic, social,
17 educational, health and general welfare of the state or
18 its citizens.

1 **Sec. 10. Specific funds and collection accounts.**—A fund
2 or collection account, which by law is dedicated to a
3 specific use, is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection ac-
5 count and shall be expended according to the provisions
6 of Chapter 12, Article 3 of the Code of West Virginia.

1 **Sec. 11. Appropriations for refunding erroneous pay-**
2 **ments.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he
7 shall issue his requisition upon the Auditor for the refund-
8 ing of the proper amount. The Auditor shall issue his
9 warrant to the Treasurer and the Treasurer shall pay the
10 warrant out of the fund into which the amount was orig-
11 inally paid.

1 **Sec. 12. Sinking fund deficiencies.**—There is hereby
2 appropriated to the Governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia Housing Devel-
5 opment Fund which is under the supervision and control

6 of the state sinking fund commission as provided by
7 Chapter 31, Article 18, Section 20b of the Code of West
8 Virginia, one thousand nine hundred thirty-one, as amend-
9 ed, or in the funds of the state sinking fund commission
10 because of the failure of any state agency for either
11 general obligation or revenue bonds or any local taxing
12 district for general obligations bonds to remit funds neces-
13 sary for the payment of interest and sinking fund re-
14 quirements. The Governor is authorized to transfer from
15 time to time such amounts to the state sinking fund com-
16 mission as may be necessary for these purposes.

17 The state sinking fund commission shall reimburse the
18 State of West Virginia through the Governor from the
19 first remittance collected from the West Virginia Housing
20 Development Fund or from any state agency or local
21 taxing district for which the Governor advanced funds,
22 with interest at the rate carried by the bonds for the
23 security or payment of which the advance was made.

1 **Sec. 13. Appropriations from taxes and license fees.**

2 —There is hereby appropriated from the soft drink tax
3 revenues for administration and enforcement of the law
4 relating to said tax a sum not to exceed two and one-half
5 percent of the total revenues collected. All such salaries
6 and expenses, authorized by law as aforesaid, shall be
7 paid by the tax commissioner through the State Treasury
8 out of gross collections.

9 There is hereby appropriated from the cigarette tax
10 revenues for administration and enforcement of the law
11 relating to said tax a sum not to exceed one and one-half
12 percent of the total revenues collected. All such salaries
13 and expenses, authorized by law as aforesaid, shall be
14 paid by the tax commissioner through the State Treasury
15 out of gross collections.

1 **Sec. 14. Appropriations to pay costs of publication of**
2 **delinquent corporations.**—There is hereby appropriated
3 out of the state fund, General Revenue, out of funds not
4 otherwise appropriated, to be paid upon requisition of the
5 Auditor and/or the Governor, as the case may be, a sum
6 sufficient to pay the cost of publication of delinquent

7 corporations as provided by Chapter 11, Article 12, Sec-
8 tions 84 and 86 of the Code of West Virginia.

1 **Sec. 15. Appropriations for local governments.**—There
2 are hereby appropriated for payment to counties, districts
3 and municipal corporations such amounts as will be nec-
4 essary to pay taxes due counties, districts and municipal
5 corporations and which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**—Where only a total sum
2 is appropriated to a spending unit, that total sum shall
3 include personal services, current expenses and capital
4 outlay, except as otherwise provided in Title I, Sec. 3.

1 **Sec. 17. General school fund.**—The balance of the pro-
2 ceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is ap-
4 propriated for expenditure in accordance with Chapter
5 18, Article 9A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.**—The expenditure
2 of the appropriations made by this act, except those ap-
3 propriations made to the legislative and judicial branches
4 of the state government, are conditioned upon the com-
5 pliance by the spending unit with the requirements of
6 Chapter 5A, Article 2 of the Code of West Virginia.

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legis-
9 lature, it is the intent of this act that reappropriation shall
10 be to the succeeding or later spending unit created unless
11 otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is de-

2 clared unconstitutional by a court of competent jurisdic-
3 tion, its decision shall not affect any portion of this act
4 which remains, but the remaining portion shall be in
5 full force and effect as if the portion declared uncon-
6 stitutional had never been a part of the act.

CHAPTER 4

(S. B. 513—By Mr. Hanlon and Mr. Hinkle)

[Passed March 4, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty, to the Auditor's Office, Account No. 1500, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there remains unappropriated a balance in the general fund available for further appropriations during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1500, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 FISCAL

4 13—*Auditor's Office—General Administration*

5 Acct. No. 1500

6 6 Representation of Needy Persons Fund \$350,000.00

7 This appropriation shall be available for expenditure
8 immediately upon the effective date of this bill.

CHAPTER 5

(S. B. 525—By Mr. Fanning and Mr. Rollins)

[Passed March 1, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the State Board of Education—Vocational Division, Account No. 2890, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there remains unappropriated a balance in the general fund available for further appropriations during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 2890, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-

nine, known as the "Budget Bill," be supplemented by adding the following item and sum:

- | | | |
|----|---|-----------|
| 1 | EDUCATION | |
| 2 | 33— <i>State Board of Education—Vocational Division</i> | |
| 3 | Acct. No. 2890 | |
| 4 | 7a Construction of New Vocational | |
| 5 | Education Facilities (Cabell Co.) | \$600,000 |
| 6 | This appropriation shall be available for expenditure | |
| 7 | immediately upon the effective date of this bill. | |
| 8 | Any unexpended balance remaining in this appropriation | |
| 9 | at the close of the fiscal year 1979-80 is hereby re- | |
| 10 | appropriated for expenditure during the fiscal year | |
| 11 | 1980-81. | |

CHAPTER 6

(H. B. 1662—By Mr. Karras)

[Passed March 3, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the Department of Corrections, Account No. 3680, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3680, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding thereto the following sum to the designated line item:

1	TITLE II. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	49 — <i>Department of Corrections</i>	
5	Acct. No. 3680	
6	5a Prison Industries	\$ 4,301
7	The purpose of this supplementary appropriation bill is to	
8	supplement the aforesaid account and items therein for ex-	
9	penditure in the current fiscal year of 1979-80. Such amounts	
10	shall be available for expenditure immediately upon the ef-	
11	fective date of this bill.	

CHAPTER 7

(H. B. 1663—By Mr. Karras)

[Passed February 29, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the West Virginia Penitentiary, Account No. 3750, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains

unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3750, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding thereto the following sums to the designated line items:

1	TITLE II. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	CORRECTIONS	
4	56— <i>West Virginia Penitentiary</i>	
5	Acct. No. 3750	
6	1 Personal Services	\$150,007
7	2 Current Expenses	218,560
8	3 Repairs and Alterations	11,718
9	4 Equipment	4,400
10	6 Total	384,685

11 The purpose of this supplementary appropriation bill is to
 12 supplement the aforesaid account and items therein for ex-
 13 penditure in the current fiscal year of 1979-80. Such amounts
 14 shall be available for expenditure immediately upon the ef-
 15 fective date of this bill.

CHAPTER 8

(H. B. 1664—By Mr. Karras)

[Passed February 29, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remain-

ing unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the Huttonsville Correctional Center, Account No. 3760, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3760, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding thereto the following sums to the designated line items:

1	TITLE II. APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	CORRECTIONS		
4	57—Huttonsville Correctional Center		
5	Acct. No. 3760		
6	1	Personal Services	\$38,364
7	2	Current Expenses	33,014
8	5	Total	<u>\$71,378</u>

9 The purpose of this supplementary appropriation bill is to
 10 supplement the aforesaid account and items therein for ex-
 11 penditure in the current fiscal year of 1979-80. Such amounts
 12 shall be available for expenditure immediately upon the
 13 effective date of this bill.

CHAPTER 9

(H. B. 1189—By Mr. Speaker, Mr. See)

[Passed February 27, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the Department of Veterans Affairs—Veterans Home, Account No. 4010, supplementing chapter one, act of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriations during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4010, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding the following item and sum:

1	TITLE II. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	59— <i>Department of Veterans Affairs</i>	
4	Veterans Home	
5	Acct. No. 4010	
6	2a Renovation and Construction	\$1,500,000
7	This appropriation shall be available for expenditure im-	
8	mediately upon the effective date of this bill.	

9 Any unexpended balance remaining in the above item at the
 10 close of the fiscal year 1979-80 is hereby reappropriated for
 11 expenditure during the fiscal year 1980-81.

CHAPTER 10

(H. B. 1404—By Mr. Speaker, Mr. See)

[Passed February 27, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the Department of Public Safety, Account No. 5700, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 5700, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding thereto the following sum to the designated line item:

1	PROTECTION		
2	102— <i>Department of Public Safety</i>		
3	Acct. No. 5700		
4	2 Current Expenses	\$64,200

5 The purpose of this supplementary appropriation bill is to
 6 supplement the aforesaid account and item therein for ex-

7 penditure in the current fiscal year of 1979-80. Such amount
8 shall be available for expenditure immediately upon the ef-
9 fective date of the bill.

CHAPTER 11

(H. B. 1625—By Mr. Farley)

[Passed February 29, 1980; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenue remaining unappropriated for the current fiscal year ending June thirtieth, one thousand nine hundred eighty, to the West Virginia Public Employees Insurance Board, Account No. 6150, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1979-80, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 6150, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding thereto the following sum to the designated line item:

1	TITLE II. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	MISCELLANEOUS BOARDS AND COMMISSIONS	
4	119— <i>West Virginia Public Employees Insurance Board</i>	
5	Acct. No. 6150	
6	2 Public Employees Health Insurance—	
7	3 State Contribution	\$2,665,000

8 The purpose of this supplementary appropriation bill is to
 9 supplement the aforesaid account and item therein for ex-
 10 penditure in the current fiscal year of 1979-80. Such amounts
 11 shall be available for expenditure immediately upon the ef-
 12 fective date of the bill.

CHAPTER 12

(H. B. 1708—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Welch Emergency Hospital, Account No. 4260, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4260, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND WELFARE

4 70—*Welch Emergency Hospital*

5 Acct. No. 4260

6	1	Personal Services	\$ 1,080,604
7	2	Current Expenses	372,013

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one item
 10 of the existing appropriation to another item of such appropria-
 11 tion for the designated spending unit, with no new moneys

12 being appropriated hereby. The amounts as newly itemized for
 13 expenditure during the fiscal year one thousand nine hundred
 14 eighty, shall be available for expenditure immediately upon the
 15 effective date of this bill.

CHAPTER 13

(H. B. 1705—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Andrew S. Rowan Memorial Home, Account No. 4270, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4270, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 **TITLE II. APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **HEALTH AND WELFARE**

4 **71—Andrew S. Rowan Memorial Home**

5 **Acct. No. 4270**

6	1	Personal Services	\$	802,953
7	2	Current Expenses		422,950

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one item
 10 of the existing appropriation to another item of such ap-
 11 propriation for the designated spending unit, with no new

12 moneys being appropriated hereby. The amounts as newly
 13 itemized for expenditure during the fiscal year one thousand
 14 nine hundred eighty, shall be available for expenditure immedi-
 15 ately upon the effective date of this bill.

CHAPTER 14

(S. B. 402—By Mr. Harman)

[Passed March 1, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Industrial School for Boys, Account No. 3700, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 3700, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 **TITLE II. APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **CORRECTIONS**

4 51—*West Virginia Industrial School for Boys*

5 **Acct. No. 3700**

6	1	Personal Services	\$927,415
7	2	Current Expenses	351,300
8	3	Repairs and Alterations	87,450
9	4	Equipment	22,950

10 The purpose of this supplementary appropriation bill is
 11 to supplement, amend and transfer certain moneys from

12 one item of the existing appropriation to other items of
 13 such appropriation for the designated spending unit, with
 14 no new moneys being appropriated hereby. The amounts
 15 as newly itemized for expenditure during the fiscal year
 16 one thousand nine hundred eighty, shall be available for
 17 expenditure immediately upon the effective date of this
 18 bill.

CHAPTER 15

(H. B. 1707—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Hopemont State Hospital, Account No. 4300, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4300, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND WELFARE

4 72—Hopemont State Hospital

5 Acct. No. 4300

6	1	Personal Services	\$	3,378,499
7	2	Current Expenses		738,725

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one item

10 of the existing appropriation to another item of such appropria-
 11 tion for the designated spending unit, with no new moneys
 12 being appropriated hereby. The amounts as newly itemized
 13 for expenditure during the fiscal year one thousand nine
 14 hundred eighty, shall be available for expenditure immediately
 15 upon the effective date of this bill.

CHAPTER 16

(H. B. 1706—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Pinecrest State Hospital, Account No. 4310, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4310, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND WELFARE

4 73—*Pinecrest State Hospital*

5 Acct. No. 4310

6	1	Personal Services	\$ 3,041,840
7	2	Current Expenses	994,128

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one item
 10 of the existing appropriation to another item of such appro-

11 priation for the designated spending unit, with no new moneys
 12 being appropriated hereby. The amounts as newly itemized
 13 for expenditure during the fiscal year one thousand nine
 14 hundred eighty, shall be available for expenditure immediately
 15 upon the effective date of this bill.

CHAPTER 17

(H. B. 1283—By Mr. Speaker, Mr. See)

[Passed February 27, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between line items in the appropriation for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the State Department of Mines, Account No. 4600, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the appropriation of Account No. 4600, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, be supplemented, amended and transferred to read as follows:

1	78— <i>Department of Mines</i>	
2	Acct. No. 4600	
3	2 Current Expenses	\$890,390
4	4 Special Mine Drainage Programs	14,260

5 The purpose of this supplementary appropriation bill is to
 6 supplement, amend and transfer certain moneys from one item
 7 of the existing appropriation to another item of such appro-
 8 priation for the designated spending unit. The amounts as
 9 itemized for expenditure during the fiscal year one thousand

10 nine hundred eighty, shall be made available for expenditure
11 upon the effective date of this bill.

CHAPTER 18

(H. B. 1666—By Mr. Mathis and Mr. Harden)

[Passed February 29, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Insurance Commissioner, Account No. 6160, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 6160, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, be supplemented, amended and transferred to read as follows:

1	TITLE II. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	120— <i>Insurance Commissioner</i>	
4	Acct. No. 6160	
5	1 Personal Services	\$530,800
6	2 Current Expenses	188,790

7 The purpose of this supplementary appropriation bill is to
8 supplement, amend and transfer certain moneys from one
9 item of the existing appropriation to another item of such ap-
10 propriation for the designated spending unit. The amounts, as
11 newly itemized for expenditure during the current fiscal year
12 of 1979-80, shall be made available for expenditure im-
13 mediately upon the effective date of this bill.

CHAPTER 19

(S. B. 595—Originating in the Committee on Finance)

[Passed February 27, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1	TITLE II. APPROPRIATIONS.	
2	Section 2. Appropriations from other funds.	
3	123— <i>State Department of Highways</i>	
4	Acct. No. 6700	
5	TO BE PAID FROM STATE ROAD FUND	
6	1	Maintenance Expressway, Trunkline and
7	2	Feeder\$ 69,000,000
8	3	Maintenance State Local Services 74,500,000
9		and State Toll Bridges (elimination of tolls)
10	4	Inventory Revolving 1,000,000
11	5	Equipment Revolving 9,000,000
12	6	General Operations 19,000,000
13	7	Debt Service 80,650,000
14	8	Interstate Construction 145,000,000
15	9	Other Federal Aid Programs 92,551,000

16	10	Appalachian Program	83,250,000
17	11	Nonfederal Aid Construction	75,726,740
18	12	Total	\$649,677,740

19 The purpose of this bill is to supplement, amend and
 20 transfer certain moneys from items of the existing ap-
 21 propriations to other items of such appropriations for the
 22 designated spending unit, and to reflect the total spend-
 23 ing authority of the spending unit for the 1979-80 fiscal
 24 year, with no new moneys being appropriated hereby.
 25 The amounts as newly itemized for expenditure in such
 26 fiscal year shall be available for expenditure upon the
 27 effective date of this bill.

CHAPTER 20

(S. B. 242—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the commissioner of banking to make an examination of every financial institution at least once every eighteen months.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-6. Commissioner's examinations of financial institution; reports; records; communications from commissioner to institution; examination by federal agency in lieu of commissioner's examination.

1 The commissioner of banking shall make, at least once

2 every eighteen months, a thorough examination of all
3 the books, accounts, records and papers of every financial
4 institution. He shall carefully examine all of the assets
5 of each such institution, including its notes, drafts,
6 checks, mortgages, securities deposited to assure the pay-
7 ment of debts unto it, and all papers, documents and
8 records showing, or in any manner relating to, its busi-
9 ness affairs, and shall ascertain the full amount and
10 the nature in detail of all of its assets and liabilities.
11 The commissioner may also make such examination of
12 any subsidiaries or affiliates of a financial institution as
13 he may deem necessary to ascertain the financial condi-
14 tion of such financial institution, the relations between
15 such financial institution and its subsidiaries and affil-
16 iates and the effect of such relations upon the affairs
17 of such financial institution. A full report of every such
18 examination shall be made and filed and preserved in
19 the office of the commissioner and a copy thereof forth-
20 with mailed to the institution examined. Every such
21 institution shall retain all of its records of final entry
22 for such period of time as required in section thirty-
23 five, article four of this chapter for banking institutions.

24 Every official communication from the commissioner
25 to any such institution, or to any officer thereof, relating
26 to an examination or an investigation of the affairs of
27 such institution conducted by the commissioner or con-
28 taining suggestions or recommendations as to the man-
29 ner of conducting the business of the institution, shall
30 be read to the board of directors at the next meeting
31 after the receipt thereof, and the president, or other
32 executive officer, of the institution shall forthwith notify
33 the commissioner in writing of the presentation and
34 reading of such communication and of any action taken
35 thereon by the institution.

36 The commissioner of banking, in his discretion, may
37 (a) accept a copy of a reasonably current examination
38 of any banking institution made by the federal deposit
39 insurance corporation or the federal reserve system in
40 lieu of an examination of such banking institution re-
41 quired or authorized to be made by the laws of this

42 state, and the commissioner may furnish to the federal
43 deposit insurance corporation or the federal reserve
44 system or to any official or examiner thereof, any copy
45 or copies of the commissioner's examinations of and
46 reports on such banking institutions, (b) accept a copy
47 of a reasonably current examination of any building
48 and loan association made by the federal home loan
49 bank board, a federal home loan bank or the federal
50 savings and loan insurance corporation, in lieu of an
51 examination of such building and loan association re-
52 quired or authorized to be made by the laws of this
53 state, and the commissioner may furnish to the federal
54 home loan bank or any of its member banks or to the
55 federal savings and loan insurance corporation or any
56 official or examiner thereof, any copy or copies of the
57 commissioner's examination and reports on such build-
58 ing and loan associations; but nothing herein shall be
59 construed to limit the duty and responsibility of banking
60 institutions or building and loan associations to comply
61 with all provisions of law relating to examinations and
62 reports, nor to limit the powers and authority of the
63 commissioner of banking with reference to examina-
64 tions and reports under existing laws.

CHAPTER 21

(S. B. 250—By Mr. Rogers)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessments of banks.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF BANKING.**§31A-2-8. Assessments, costs and expenses of examinations; collection.**

1 (a) The commissioner of banking shall charge and
2 collect from each state banking institution and pay into
3 the state treasury assessments as follows:

4 (1) A semiannual assessment of fifty dollars upon the
5 first twenty-five thousand dollars of the total assets
6 and six and three-quarters cents for each additional one
7 thousand dollars of such assets, computed on total assets
8 of the bank as shown on the report of condition of the
9 bank as of the last business days in June and December
10 in each year.

11 (2) The commissioner shall, during the month of
12 January, one thousand nine hundred eighty-one, and each
13 July and each January thereafter, prepare and send to
14 each state banking institution a statement of the amount
15 of the assessment due.

16 (b) For making an examination within the state of any
17 other financial institution, the commissioner of banking
18 shall charge and collect from such other financial insti-
19 tution and pay into the state treasury the actual and
20 necessary costs and expenses incurred in connection
21 therewith, as fixed and determined by the commission.

22 (c) If any such examination be made at a place out-
23 side of this state, the assessments, costs and expenses shall
24 be as above provided, except that there shall be an addi-
25 tional charge for mileage and travel expense as provided
26 and allowed by law for state agencies and employees.

27 (d) The commissioner of banking may maintain an
28 action for the recovery of all such assessments, costs and
29 expenses in any court of competent jurisdiction.

CHAPTER 22

(H. B. 1170—By Mr. Schifano and Mr. Swann)

[Passed February 15, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-a, relating to an alternative means for determining the maximum rate of interest on loans made by persons and by banks chartered under the laws of this state; setting forth certain legislative findings and a legislative purpose; authorizing and directing the commissioner of banking to make certain findings and determinations and to prescribe from time to time a maximum rate of interest for such loans which shall not exceed one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve district where such person or state chartered bank is located; authorizing any person or a state chartered bank to contract in writing for the payment of interest not to exceed such maximum rate; and fixing at time of commitment an interest rate on loans to be consummated in the future.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-a, to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30a. Legislative findings; fixing alternative maximum interest rate on loans by persons or by banks chartered under state law; authorizing commissioner of banking to make certain findings and determinations and to fix maximum interest rate on such loans from time to time subject to limitation.

- 1 (a) The Legislature hereby finds and declares that:
- 2 (1) Under federal banking laws, national banking asso-

3 ciations are permitted to charge interest on loans at a rate
4 not exceeding one percent in excess of the discount rate on
5 ninety-day commercial paper in effect at the federal reserve
6 bank in the federal reserve district where the national bank-
7 ing association is located:

8 (2) Banks chartered under the laws of West Virginia are
9 unable to charge interest on a comparable basis, and hence
10 may from time to time be at a competitive disadvantage in
11 relation to national banking associations having their princi-
12 pal offices in the state:

13 (3) It is in the best interest of the citizens of this state
14 to preserve the state banking system and to that end, and in
15 order to foster equitable competition as to interest rates, to
16 provide a means by which banks chartered under the laws of
17 West Virginia, as an alternative to the interest rates authorized
18 by any other provisions of this code, may, if authorized by the
19 commissioner of banking, charge interest at a rate comparable
20 to the rate now permitted to national banking associations;

21 (4) Such alternative interest rate should be prescribed from
22 time to time by the commissioner of banking, taking into ac-
23 count the interest rate permitted to be charged by national bank-
24 ing associations having their principal offices in the state and
25 conditions then prevailing so as to permit and encourage com-
26 petition in interest rates between the banks of West Virginia.

27 (b) In view of the foregoing findings, it is the purpose of
28 this section to authorize and direct the commissioner of bank-
29 ing to prescribe from time to time the maximum interest rates
30 on loans of money made by persons or by banks chartered
31 under the laws of West Virginia, as an alternative to the inter-
32 est rates authorized by any other provisions of this code, and
33 to authorize such persons or banks to charge up to the maxi-
34 mum interest rates so fixed.

35 (c) The commissioner of banking is hereby authorized and
36 directed to find and determine from time to time whether the
37 maximum rate of interest which may be charged by national
38 banking associations having their principal offices in the state
39 is greater than the maximum rate of interest which may be
40 charged by persons or by banks chartered under the laws of

41 West Virginia located in the same federal reserve district and
42 if so, whether under prevailing conditions said state chartered
43 banks are thereby placed at a competitive disadvantage and
44 to prescribe from time to time by order a maximum rate of
45 interest which may be charged by persons or by banks chart-
46 ered under the laws of West Virginia, as an alternative to the
47 interest rates authorized by any other provisions of this code,
48 which maximum rate of interest shall not exceed one percent
49 in excess of the discount rate on ninety-day commercial paper
50 in effect at the federal reserve bank in the federal reserve
51 district where such banks or persons are located, such finding
52 and determination to be made and such maximum rate pre-
53 scribed within two business days after the effective date of any
54 change in such discount rate.

55 (d) Each time the discount rate shall change at a federal
56 reserve bank in a federal reserve district in which a bank
57 chartered under the laws of West Virginia is located, the com-
58 missioner of banking shall, in accordance with the provisions
59 of subsection (c) of this section, make the required finding and
60 determination and prescribe the maximum rate of interest
61 which may be charged by persons or by state-chartered banks
62 located in such federal reserve district for loans made pursuant
63 to the provisions of this section, and shall cause such maximum
64 rate of interest to be issued to the public, such maximum rate
65 of interest to be effective immediately.

66 (e) Notwithstanding any other provisions of this sec-
67 tion, the commissioner of banking shall on the effective
68 date of this section or, if such day is a Saturday, Sunday
69 or legal holiday, on the next succeeding business day make
70 the finding and determination required by subsection (c) of
71 this section and prescribe by order and issue to the public
72 said maximum rate of interest for persons and state chartered
73 banks located in such district which shall be effective until
74 the commissioner of banking shall next issue an order pre-
75 scribing such maximum rate of interest.

76 (f) As an alternative to the interest rate authorized by
77 any other provisions of this code, any person may or any bank
78 now or hereafter chartered under the laws of West Virginia
79 may, after the effective date of this section, on any loan of
80 money, contract in writing for the payment of interest at a rate,

81 including points expressed as a percentage of the loan
82 divided by the number of years of the loan contract, not
83 to exceed the then effective maximum rate prescribed by the
84 commissioner of banking pursuant to the provisions of this
85 section.

86 (g) For the purpose of subsection (f) of this section, the term
87 "points" is defined as the amount of money, or other considera-
88 tion, received by any person or by such banks, from whatever
89 source, as a consideration for making the loan and not other-
90 wise expressly permitted by statute.

91 (h) A commitment to make a loan pursuant to this section
92 which provides for consummation within some future time may
93 be consummated pursuant to the provisions, including interest
94 rate, of such commitment notwithstanding the fact that the
95 maximum rate of interest at the time the loan contract
96 is entered into is less than a commitment rate of interest:
97 *Provided*, That the commitment rate of interest does not
98 exceed the maximum interest rate in effect on the date the
99 commitment was issued: *Provided, however*, That the com-
100 mitment when agreed to by the borrower constitutes a legally
101 binding obligation on the part of such person or such bank to
102 make such a loan within a specified time period in the future at
103 a rate of interest not exceeding the maximum rate of interest
104 effective as of the date of commitment, and the commitment
105 does not include any condition for increase of the interest rate
106 at the time of loan consummation even though the maximum
107 rate of interest is then higher.

108 (i) Nothing contained in this section shall prohibit the
109 parties to any loan transaction from contracting for a rate
110 of interest authorized by any other provision of this code.

CHAPTER 23

(S. B. 364—By Mr. Kusic)

{Passed February 26, 1980; in effect ninety days from passage. Vetoed by the Governor.
Reconsidered and passed by the Legislature notwithstanding the objections of the Governor.}

AN ACT to amend and reenact sections two, three and thirteen,
article sixteen, chapter eleven of the code of West Virginia,

one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article one, chapter sixty of said code, all relating to changing the definition of nonintoxicating beer to a product containing not more than four and two-tenths percent of alcohol by weight, or six percent by volume.

Be it enacted by the Legislature of West Virginia:

That sections two, three and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article one, chapter sixty of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-2. Definitions.

§11-16-3. State license required; alcoholic content of beer manufactured for sale without state.

§11-16-13. Unlawful acts of licensees; penalties.

§11-16-2. Definitions.

1 For the purpose of this article:

2 "Nonintoxicating beer" shall mean all cereal malt
3 beverages or products of the brewing industry commonly
4 referred to as beer, lager beer, ale, and all other mixtures
5 and preparations produced by the brewing industry, and
6 containing not more than four and two-tenths percent
7 of alcohol by weight, or six percent by volume, which-
8 ever is greater, which are hereby declared to be non-
9 intoxicating and the word "liquor" as used in chapter
10 sixty of the code of West Virginia shall not be construed
11 to include or embrace nonintoxicating beer.

12 "Person" shall mean and include an individual, firm,
13 partnership, association or corporation.

14 "Retailer" shall mean any person selling, serving,

15 delivering or otherwise dispensing nonintoxicating beer
16 at his established and licensed place of business.

17 "Distributor" shall mean any person, whose chief place
18 of business is within the state of West Virginia, jobbing
19 or distributing nonintoxicating beer to retailers at whole-
20 sale.

21 "Brewer" shall mean any person, firm, association,
22 partnership or corporation manufacturing, bottling or
23 otherwise producing nonintoxicating beer for sale at
24 wholesale.

25 "Original container" shall mean the container used by
26 the brewer at the place of manufacturing, bottling, or
27 otherwise producing nonintoxicating beer for sale at
28 wholesale.

**§11-16-3. State license required; alcoholic content of beer
manufactured for sale without state.**

1 No person shall manufacture, sell, possess for sale,
2 transport or distribute nonintoxicating beer except in
3 accordance with the provisions of this article, and after
4 first obtaining a state license therefor, as hereinafter
5 provided: *Provided, however,* That nothing herein con-
6 tained shall prohibit any brewer located within the state
7 from manufacturing or transporting for sale without the
8 state beer of an alcoholic strength greater than that of
9 nonintoxicating beer.

§11-16-13. Unlawful acts of licensees; penalties.

1 It shall be unlawful:

2 (a) For any licensee, his, its or their servants, agents
3 or employees to sell, give or dispense, or any individual
4 to drink or consume, in or on any licensed premises or
5 in any rooms directly connected therewith, nonintoxicat-
6 ing beer on weekdays between the hours of two o'clock
7 a.m., and seven o'clock a.m., or between the hours of two
8 o'clock a.m., and one o'clock p.m., on any Sunday, *except*
9 in private clubs licensed under the provisions of article
10 seven, chapter sixty of this code, where the hours shall
11 conform with the hours of sale of alcoholic liquors;

12 (b) For any licensee, his, its or their servants, agents
13 or employees, to sell, furnish or give any nonintoxicating
14 beer to any person visibly or noticeably intoxicated, or
15 to any insane person, or to any habitual drunkard, or to
16 any person under the age of eighteen years;

17 (c) For any distributor to sell or offer to sell, or any
18 retailer to purchase or receive, any nonintoxicating beer
19 except for cash; and no right of action shall exist to col-
20 lect any claims for credit extended contrary to the provi-
21 sions of this subdivision. Nothing herein contained shall
22 prohibit a licensee from crediting to a purchaser the ac-
23 tual price charged for packages or containers returned by
24 the original purchaser as a credit on any sale, or from re-
25 funding to any purchaser the amount paid or deposited for
26 such containers when title is retained by the vendor;

27 (d) For any brewer or distributor or his, its or their
28 agents, to transport or deliver nonintoxicating beer to
29 any retail licensee on Sunday;

30 (e) For any brewer or distributor to give, furnish,
31 rent or sell any equipment, fixtures, signs or supplies
32 directly or indirectly or through a subsidiary or affiliate
33 to any licensee engaged in selling products of the brew-
34 ing industry at retail, or to offer any prize, premium,
35 gift, or other similar inducement, except advertising
36 matter of nominal value, to either trade or consumer
37 buyers: *Provided*, That nothing contained herein shall
38 prohibit a distributor from offering for sale or renting
39 tanks of carbonic gas;

40 (f) For any licensee to transport, sell, deliver or pur-
41 chase any nonintoxicating beer or product of the brewing
42 industry upon which there shall appear a label or other
43 informative data which in any manner refers to the
44 alcoholic content of such beer or product of the brewing
45 industry, or upon the label of which there appears the
46 word or words "strong," "full strength," "extra strength,"
47 "prewar strength," "high test" or other similar expres-
48 sions bearing upon the alcoholic content of such product
49 of the brewing industry, or which refers in any manner
50 to the original alcoholic strength, extract or balling

51 proof from which such beverage was produced, except
52 that such label shall state the alcoholic content thereof;

53 (g) For any licensee to permit in his premises any
54 lewd, immoral or improper entertainment, conduct or
55 practice;

56 (h) For any licensee except the holder of a license to
57 operate a private club issued under the provisions of
58 article seven, chapter sixty of this code, to possess a
59 federal license, tax receipt or other permit entitling,
60 authorizing or allowing such licensee to sell liquor or
61 alcoholic drinks;

62 (i) For any licensee to obstruct the view of the interior
63 of his premises by enclosure, lattice, drapes or any means
64 which would prevent plain view of the patrons occupy-
65 ing such premises. The interior of all licensed premises
66 shall be adequately lighted at all times: *Provided*, That
67 provisions of this subdivision shall not apply to the
68 premises of a Class B retailer or to the premises of a
69 private club licensed under the provisions of article
70 seven, chapter sixty of this code;

71 (j) For any licensee to manufacture, import, sell, trade,
72 barter, possess, or acquiesce in the sale, possession or
73 consumption of any alcoholic liquors on the premises
74 covered by such license or on premises directly or in-
75 directly used in connection therewith: *Provided*, That
76 the prohibitions contained in this subdivision with
77 respect to the selling or possessing or to the acquiescence
78 in the sale, possession or consumption of alcoholic liquors
79 shall not be applicable with respect to the holder of a
80 license to operate a private club issued under the provi-
81 sions of article seven, chapter sixty of this code;

82 (k) For any licensee to print, paint or place upon
83 the door, window, or in any other public place in or
84 about the premises, the word "saloon" or word of similar
85 character or nature, or for the word "saloon" or similar
86 words to be used in any advertisement by the licensee;

87 (l) For any retail licensee to sell or dispense non-
88 intoxicating beer purchased or acquired from any source

89 other than a licensed distributor or brewer under the
90 laws of this state;

91 (m) For any licensee to permit loud, boisterous or
92 disorderly conduct of any kind upon his premises or to
93 permit the use of loud musical instruments if either or
94 any of the same may disturb the peace and quietude of
95 the community wherein such business is located:
96 *Provided*, That no licensee shall have in connection with
97 his place of business any loudspeaker located on the out-
98 side of the licensed premises that broadcasts or carries
99 music of any kind;

100 (n) For any person whose license has been revoked,
101 as in this article provided, to obtain employment with
102 any retailer within the period of one year from the date
103 of such revocation, or for any retailer to employ know-
104 ingly any such person within such time;

105 (o) For any distributor to sell, possess for sale, trans-
106 port or distribute nonintoxicating beer except in the
107 original container;

108 (p) For any licensee to permit any act to be done
109 upon the licensed premises, the commission of which
110 constitutes a crime under the laws of this state;

111 (q) For any Class B retailer to permit the consump-
112 tion of nonintoxicating beer upon his licensed premises;

113 (r) For any licensee, his, its or their servants, agents,
114 or employees, or for any licensee by or through such
115 servants, agents or employees, to allow, suffer or permit
116 any person under the age of eighteen years to loiter in or
117 upon any licensed premises; except, however, that the
118 provisions of this subdivision shall not apply where such
119 person under the age of eighteen years, is in, or upon
120 such premises in the immediate company of his or her
121 parent or parents, or where and while such person under
122 the age of eighteen years is in, on or upon such premises
123 for the purpose of and actually making a lawful pur-
124 chase of any items or commodities therein sold, or for
125 the purchase of and actually receiving any lawful service
126 therein rendered, including the consumption of any

127 item of food, drink or soft drink therein lawfully pre-
128 pared and served or sold for consumption on such
129 premises.

130 Any person who violates any provision of this article or
131 who makes any false statement concerning any material
132 fact in submitting application for license or for a renewal
133 of a license or in any hearing concerning the revocation
134 thereof, or who commits any of the acts herein declared
135 to be unlawful, shall be guilty of a misdemeanor, and
136 shall be punished for each offense by a fine of not less
137 than twenty-five nor more than five hundred dollars, or
138 imprisoned in the county jail for not less than thirty
139 days or more than six months, or by both fine and im-
140 prisonment in the discretion of the court. Justices of
141 the peace shall have concurrent jurisdiction with the
142 circuit court, and any other courts having criminal juris-
143 diction in their county, for the trial of all misdemeanors
144 arising under this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 "Alcohol" shall mean ethyl alcohol whatever its origin,
3 and shall include synthetic ethyl alcohol but not dena-
4 tured alcohol.

5 "Beer" shall mean any beverage obtained by the
6 fermentation of barley, malt, hops, or any other similar
7 product or substitute, and containing more alcohol than
8 that of nonintoxicating beer.

9 "Nonintoxicating beer" shall mean any beverage
10 obtained by the fermentation of barley, malt, hops, or
11 similar products or substitute, and containing not more
12 alcohol than that specified by section two, article sixteen,
13 chapter eleven.

14 "Wine" shall mean any alcoholic beverage obtained
15 by the fermentation of the natural content of fruits, or
16 other agricultural products, containing sugar.

17 "Spirits" shall mean any alcoholic beverage obtained
18 by distillation and mixed with potable water and other
19 substances in solution, and includes brandy, rum, whiskey,
20 cordials and gin.

21 "Alcoholic liquor" shall include alcohol, beer, wine,
22 and spirits, and any liquid or solid capable of being used
23 as a beverage, but shall not include nonintoxicating beer.

24 "Original package" shall mean any closed or sealed
25 container or receptacle used for holding alcoholic liquor.

26 "Sale" shall mean any transfer, exchange, or barter in
27 any manner or by any means, for a consideration, and
28 shall include all sales made by principal, proprietor,
29 agent or employee.

30 "Selling" shall include solicitation or receipt of orders;
31 possession for sale; and possession with intent to sell.

32 "Person" shall mean an individual, firm, partnership,
33 corporation or voluntary association.

34 "Manufacture" means to distill, rectify, ferment, brew,
35 make, mix, concoct, process, blend, bottle, or fill an
36 original package with any alcoholic liquor.

37 "Manufacturer" shall mean any person engaged in the
38 manufacture of any alcoholic liquor, and among others
39 includes a distiller, a rectifier, a wine maker, and a
40 brewer.

41 "Brewery" shall mean an establishment where beer is
42 manufactured or in any way prepared.

43 "Winery" shall mean an establishment where wine is
44 manufactured or in any way prepared.

45 "Distillery" shall mean an establishment where alco-
46 holic liquor other than wine or beer is manufactured or
47 in any way prepared.

48 "Public place" shall mean any place, building or con-
49 veyance to which the public has, or is permitted to have
50 access, including restaurants, soda fountains, and hotel
51 dining rooms and lobbies, and corridors of hotels, and

- 52 any highway, street, lane, park or place of public resort
53 or amusement.
- 54 "State liquor store" shall mean a store established and
55 operated by the commission under this chapter for the
56 sale of alcoholic liquor in the original package for con-
57 sumption off the premises.
- 58 "An agency" shall mean a drugstore, grocery store or
59 general store designated by the commission as a retail
60 distributor of alcoholic liquor for the West Virginia
61 alcohol beverage control commissioner.
- 62 "Department" shall mean the organization through
63 which the commission exercises powers imposed upon
64 it by this chapter.
- 65 "Commission" shall mean the West Virginia alcohol
66 beverage control commissioner.

CHAPTER 24

(H. B. 988—By Mr. Shaffer and Mr. Stephens)

[Passed February 21, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen and twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-b, relating to removal of any presumption by which one natural parent may be awarded custody of minor children; providing for visitation rights of grandparents of minor children; and providing for restoration of former name of wife.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said

chapter be further amended by adding thereto a new article, designated article two-b, all to read as follows:

Article

2. Divorce, Annulment and Separate Maintenance.

2B. Child Visitation.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Alimony; custody and maintenance of children.

§48-2-23. Former name of wife; restoration.

§48-2-15. Alimony; custody and maintenance of children.

1 Upon ordering a divorce, the court may make such further
2 order as it shall deem expedient, concerning the maintenance
3 of the parties, or either of them; and upon ordering the annul-
4 ment of a marriage, or a divorce, the court may make such
5 further order as it shall deem expedient, concerning the care,
6 custody, education and maintenance of the minor children,
7 and may determine with which of the parents or other proper
8 person or persons the children or any of them, may remain;
9 and the court may, from time to time afterward, on the veri-
10 fied petition of either of the parties, revise or alter such order
11 concerning the maintenance of the parties, or either of them,
12 and make a new order concerning the same, as the altered
13 circumstances or needs of the parties may render necessary
14 to meet the ends of justice; and the court may also from time
15 to time afterward, on the verified petition of either of the
16 parties or other proper person having actual or legal custody
17 of such child or children, revise or alter such order concern-
18 ing the care, custody, education and maintenance of the
19 children, and make a new order concerning the same, as the
20 circumstances of the parents or other proper person or per-
21 sons and the benefit of the children may require. In making
22 any such order respecting custody of minor children, there
23 shall be no legal presumption that, as between the natural
24 parents, either the father or the mother should be awarded
25 custody of said children, but the court shall make an award
26 of custody solely for the best interest of the children based
27 upon the merits of each case. In any case where the divorce
28 or the annulment is denied, if the parties are living separate
29 and apart from each other, the court shall retain jurisdiction

30 of the case for the purpose of determining with which of
31 the parents or other proper person or persons the children
32 or any of them may remain and of making such order con-
33 cerning the care, custody, education and maintenance of the
34 minor children, or any of them, as to the court may seem
35 proper and the benefit of the child or children may require;
36 and such order may, from time to time afterward, on verified
37 petition of either of the parties or other proper person having
38 actual or legal custody of such child or children, be revised
39 or altered, and a new order made, as the circumstances of
40 the parties or the needs of the children may require. For the
41 purpose of making effectual any order provided for in this
42 section the court may make any order concerning the estate
43 of the parties, or either of them, as it shall deem expedient.

44 In any case where a divorce is granted in this state upon
45 constructive service of process, and personal jurisdiction is
46 thereafter obtained of the defendant in such case, the court
47 may make such further order as it shall deem expedient, con-
48 cerning the maintenance of the parties, or either of them, or
49 concerning the care, custody, education and maintenance of
50 the minor children, and in any case where an annulment is
51 granted in this state upon constructive service of process, and
52 personal jurisdiction is thereafter obtained of the defendant
53 in such case, the court may make such further order as it
54 shall deem expedient concerning the care, custody, education
55 and maintenance of the minor children.

56 Upon ordering the annulment of a marriage or a divorce, the
57 court may, in its discretion, make such further order as it
58 shall deem expedient, concerning the grant of reasonable visi-
59 tation rights to any grandparent of the minor children upon
60 application, if the grandparent or grandparents are related to
61 such minor child through a party to such action whose where-
62 abouts are unknown or through a party who did not answer
63 or otherwise appear and defend the cause of action in which
64 such divorce or annulment is granted, and the court may issue
65 any necessary order to enforce such order or decree.

§48-2-23. Former name of wife; restoration.

1 The court upon granting an annulment or divorce to the

2 husband or wife, shall, if requested to do so by the wife,
 3 allow the wife to resume her maiden name. The court shall,
 4 if requested to do so by the wife, allow the wife to resume
 5 the name of a former husband if she has any living minor child
 6 or children by her marriage to such former husband.

ARTICLE 2B. CHILD VISITATION.

§48-2B-1. Grandparents' visitation.

1 Upon the verified petition by a parent of a deceased child
 2 seeking visitation rights with grandchildren of the petitioner,
 3 the court may order that the grandparent shall have such
 4 reasonable and seasonable visitation rights with said grand-
 5 child or grandchildren as the court may deem proper and in
 6 the best interest of the child or children.

CHAPTER 25

(Com. Sub. for H. B. 1410—By Mr. Schifano)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six, chapter forty-nine of said code; to further amend article six of said chapter by adding thereto a new section, designated section nine; and to amend article one-c, chapter sixty-two of said code by adding thereto a new section, designated section seventeen-a, all relating to child welfare generally; authorizing and empowering the state department of welfare to provide care, support, protective services and custody for certain children; deleting requirements that the findings of the court must be based partially upon conditions existing at time of hearing; establishing emergency procedures for the taking into custody, without court action, by a law-enforcement officer of any neglected or abused child who is abandoned or who needs emergency medical treatment; specifying certain conditions and time and other limitations in connection with such

emergency procedures; requiring certain inquiries, notices and statements; relating to other restrictions and limitations on the taking and retention of custody of children; defining terms; and relating to conditions of bail in criminal offenses against a child.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article six of chapter forty-nine be amended and reenacted; that article six of said chapter be further amended by adding thereto a new section, designated section nine, and that article one-c, chapter sixty-two of said code be amended by adding thereto a new section, designated section seventeen-a, all to read as follows:

Chapter

49. Child Welfare.

62. Criminal Procedure.

CHAPTER 49. CHILD WELFARE.

Article

2. State Responsibilities for the Protection and Care of Children.

6. Procedure in Cases of Child Neglect or Abuse.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-16. State responsibility for child care.

1 The state department is hereby authorized and empowered
2 to provide care, support and protective services for children
3 who are handicapped by dependency, neglect, illegitimate
4 birth, mental or physical disability, or who for other reasons
5 are in need of public service. Such department is also hereby
6 authorized and empowered in its discretion to accept children
7 for care from their parent or parents, guardian, custodian or
8 relatives and to accept the custody of children committed to
9 its care by courts exercising juvenile jurisdiction. The state
10 department of welfare or any county office of such department
11 is also hereby authorized and empowered in its discretion to
12 accept temporary custody of children for care from any
13 law-enforcement officer in an emergency situation.

14 The state department of welfare shall provide care in special
15 boarding homes for children needing detention pending dis-
16 position by a court having juvenile jurisdiction or temporary
17 care following such court action.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused; notice—
Right to counsel; improvement period; hearing; transcript.

§49-6-9. Custody in emergency situations.

**§49-6-2. Petition to court when child believed neglected or abused;
notice—Right to counsel; improvement period; hearing;
transcript.**

1 (a) In any proceeding under the provisions of this article,
2 the child, his parents, his custodian or other persons standing
3 in loco parentis to him, such persons other than the child being
4 hereinafter referred to as other party or parties, shall have the
5 right to be represented by counsel at every stage of the pro-
6 ceedings and shall be informed by the court of their right to be
7 so represented and that if they cannot pay for the services of
8 counsel, that counsel will be appointed. If the child or other
9 parties have not retained counsel and the child and other
10 parties cannot pay for the services of counsel, the court
11 shall, by order entered of record, at least ten days prior
12 to the date set for hearing, appoint an attorney or attorneys
13 to represent the child and other party or parties and so
14 inform the parties. Under no circumstances may the same
15 attorney represent both the child and the other party or
16 parties; however, if more than one child from a family is
17 involved in the proceeding, one attorney may represent all
18 the children. The court may allow to each attorney so
19 appointed a fee in the same amount which appointed counsel
20 can receive in felony cases.

21 (b) In any proceeding under this article, the parents or
22 custodians may, prior to final hearing, move to be allowed
23 an improvement period of three to twelve months in order to
24 remedy the circumstances or alleged circumstances upon which
25 the proceeding is based. The court shall allow such an im-
26 provement period unless it finds compelling circumstances to

27 justify a denial thereof, but may require temporary custody in
28 the state department or another agency during the improve-
29 ment period.

30 (c) In any proceeding under this article, the party or
31 parties having custody of the child shall be afforded a mean-
32 ingful opportunity to be heard, including the opportunity to
33 testify and to present and cross-examine witnesses. The
34 petition shall not be taken as confessed. A transcript or re-
35 cording shall be made of all proceedings unless waived by all
36 parties to the proceeding. The rules of evidence shall apply.
37 Where relevant, the court shall consider the efforts of the
38 state department to remedy the alleged circumstances. At the
39 conclusion of the hearing the court shall make a determination
40 based upon the evidence and shall make findings of fact and
41 conclusions of law as to whether such child is abused or
42 neglected, which shall be incorporated into the order of the
43 court. The findings must be based upon conditions existing
44 at the time of the filing of the petition and proven by clear
45 and convincing proof.

46 (d) Following the court's determination, it shall be in-
47 quired of the parents or custodians whether or not appeal
48 is desired and the response transcribed. A negative response
49 shall not be construed as a waiver. The evidence shall be
50 transcribed and made available to the parties or their counsel
51 as soon as practicable, if the same is required for purposes of
52 further proceedings. If an indigent person intends to pursue
53 further proceedings, the court reporter shall furnish a trans-
54 cript of the hearing without cost to the indigent person, if an
55 affidavit is filed stating that he cannot pay therefor.

§49-6-9. Custody in emergency situations.

1 (a) A child believed to be a neglected child or an abused
2 child may be taken into custody without the court order other-
3 wise required by section three of this article by a law-
4 enforcement officer (1) if the child is abandoned as defined
5 in subsection (g) of this section, or (2) if such officer deter-
6 mines that the child is in a condition requiring emergency
7 medical treatment by a physician and the child's parents,
8 parent, guardian or custodian refuses to permit such treat-

9 ment, or is unavailable for consent. A child who
10 suffers from a condition requiring emergency medical
11 treatment, whose parents, parent, guardian or custodian
12 refuses to permit the providing of such emergency medical
13 treatment, may be retained in a hospital by a physician against
14 the will of such parents, parent, guardian or custodian, as
15 provided in subsection (c) of this section.

16 (b) A child taken into protective custody as abandoned
17 under the provisions of this section may be housed by the
18 state department or in any authorized child shelter facility.
19 The authority to hold such child in protective custody as
20 abandoned, absent a petition and proper order granting
21 temporary custody pursuant to section three of this article,
22 shall terminate by operation of law upon the happening of
23 either of the following events, whichever shall first occur:
24 (1) the expiration of ninety-six hours from the time the child
25 is initially taken into protective custody, or (2) the expiration
26 of the circumstances which initially warranted the determina-
27 tion of abandonment. No child may be considered abandoned
28 and custody withheld from such child's parents, parent,
29 guardian or custodian presenting themselves, himself or her-
30 self in a fit and proper condition and requesting physical
31 custody of such child. No child may be removed from a
32 place of residence as abandoned under this section until after
33 (1) all reasonable efforts to make inquiries and arrangements
34 with neighbors, relatives and friends have been exhausted;
35 or if no such arrangements can be made, (2) the state de-
36 partment may place in the residence a home services
37 worker with the child for a period of not less than
38 twelve hours to await the return of such child's parents,
39 parent, guardian or custodian. Prior to taking a child into
40 protective custody as abandoned at a place at or near
41 the residence of such child, the law-enforcement officer
42 shall post a typed or legibly handwritten notice at the
43 place the child is found, informing the parents, parent,
44 guardian or custodian that the child was taken by a law-
45 enforcement officer, the name, address and office telephone
46 number of the officer, the place and telephone number where
47 information can continuously be obtained as to the child's

48 whereabouts, and if known, the worker for the state department
49 having responsibility for the child.

50 (c) A child taken into protective custody pursuant to
51 the provisions of this section for emergency medical treat-
52 ment may be held in a hospital under the care of a phy-
53 sician against the will of such child's parents, parent, guar-
54 dian or custodian for a period not to exceed ninety-six
55 hours. The parents, parent, guardian or custodian may not
56 be denied the right to see or visit with such child in a
57 hospital. The authority to retain a child in protective
58 custody in a hospital as requiring emergency medical
59 treatment shall terminate by operation of law upon the
60 happening of either of the following events, whichever
61 shall first occur: (1) When the condition, in the opinion
62 of the physician, no longer required emergency hospital-
63 ization, or (2) upon the expiration of ninety-six hours
64 from the initiation of custody, unless within such time,
65 a petition is presented and a proper order obtained from
66 the circuit court.

67 (d) Prior to assuming custody of a child from a law-
68 enforcement officer, pursuant to the provisions of this section,
69 a physician or worker from the state department shall require
70 a typed or legibly handwritten statement from such officer
71 identifying such officer's name, address and office telephone
72 number and specifying all the facts upon which the decision to
73 take the child into protective custody was based, and the
74 date, time and place of the taking.

75 (e) Any worker for the state department assuming custody
76 of a child pursuant to the provisions of this section shall
77 immediately notify the parents, parent, guardian or custodian
78 of the child of the taking of such custody and the reasons
79 therefor, if the whereabouts of the parents, parent, guardian
80 or custodian are known or can be discovered with due
81 diligence; and if not, notice and explanation shall be given
82 to the child's closest relative, if his or her whereabouts are
83 known or can be discovered with due diligence within a
84 reasonable time. An inquiry shall be made of relatives and
85 neighbors, and if a relative or appropriate neighbor is willing

86 to assume custody of such child, such child shall temporarily
87 be placed in such custody.

88 (f) No child shall be taken into custody under circum-
89 stances not justified by this section or pursuant to section
90 three of this article without appropriate process. Any re-
91 tention of a child or order for retention of a child not
92 complying with the time limits and other requirements speci-
93 fied in this article shall be void by operation of law.

94 (g) As used in this section:

95 (1) "Abandoned" means to be without supervision or
96 shelter for an unreasonable period of time in light of the
97 child's age and the ability to care for himself or herself in
98 circumstances presenting an immediate threat of serious harm
99 to such child;

100 (2) A "law-enforcement officer" means a law-enforcement
101 officer of the department of public safety, a municipality or
102 county sheriff's department;

103 (3) A "condition requiring emergency medical treatment"
104 means a condition which, if left untreated for a period of a
105 few hours, may result in permanent physical damage; such a
106 condition includes, but is not limited to, profuse or arterial
107 bleeding, dislocation or fracture, unconsciousness and evidence
108 of ingestion of significant amounts of a poisonous substance.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

1 When the offense charged is an assault or other offense
2 against a child who is defined in chapter forty-nine of this
3 code, it may be a condition of bond that the defendant shall
4 not live in the same residence as the victim of the alleged
5 offense, and the court may make such other conditions of
6 bond with respect to contact with the victim as it deems
7 necessary under the circumstances to protect the child.

CHAPTER 26

(Com. Sub. for H. B. 1079—By Mr. Stephens and Mr. Tucker)

[Passed March 7, 1980; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to authorizing the court, on its own motion or upon motion of counsel, to commit an adjudicated juvenile to the custody of the commissioner of corrections for diagnostic study and medical examination, not to exceed thirty days, as part of the disposition stage of the juvenile proceedings; report and recommendations of the commissioner.

Be it enacted by the Legislature of West Virginia:

That article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen-a, to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13a. Examination, diagnosis and classification; period of custody.

1 After adjudication as part of the dispositional proceeding,
2 the court, upon its own motion, or upon request of counsel,
3 may order the child to be delivered into the custody of the
4 commissioner of corrections who shall cause such child to be
5 forthwith transferred to a juvenile diagnostic center for a
6 period not to exceed thirty days. During such period, such
7 child shall undergo examination, diagnosis, classification, and
8 a complete medical examination and shall at all times be kept
9 in an area wholly segregated from the general juvenile inmate
10 population in the custody of the commissioner of corrections.
11 Not later than thirty days after commitment pursuant to this
12 section such juvenile shall be remanded and delivered to the
13 custody of the juvenile probation officer of the county wherein
14 the child was adjudicated delinquent or to the custody of such
15 other person as the court shall direct by its order. Within ten

16 days following the termination of such examination, diagnosis
17 and classification, the commissioner of corrections shall make
18 or cause to be made a report to the court containing the
19 results, findings, conclusions and recommendations of the
20 commissioner with respect to such child.

CHAPTER 27

(S. B. 514—By Mr. Hanlon and Mr. Hinkle)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation and expenses of judges of the court of claims.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-8. Compensation of judges; expenses.

1 Each judge of the court shall receive one hundred
2 fifteen dollars for each day actually served, and actual
3 expenses incurred in the performance of his duties. The
4 number of days served by each judge shall not exceed
5 one hundred in any fiscal year, except by authority of
6 the joint committee on government and finance. Req-
7 uisitions for compensation and expenses shall be ac-
8 companied by sworn and itemized statements, which shall
9 be filed with the auditor and preserved as public records.
10 For the purpose of this section, time served shall include
11 time spent in the hearing of claims, in the consideration of
12 the record, in the preparation of opinions, and in neces-
13 sary travel.

CHAPTER 28

(H. B. 753—By Mr. Goodwin)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conservation officers; exclusion from coverage of wage and hour law; premium pay in lieu of overtime; and days and hours in the workweek.

Be it enacted by the Legislature of West Virginia:

That section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;
MOTORBOATING.**

**§20-7-1a. Conservation officers excluded from coverage of wage
and hour laws; supplemental pay in lieu of overtime;
regulation.**

1 The Legislature finds and declares that the supreme
2 court of appeals of West Virginia has held that conservation
3 officers are covered by the provisions of the state wage and
4 hour law, article five-c, chapter twenty-one of this code.
5 The Legislature further finds and declares that because of
6 the unique duties of conservation officers, it is not appropriate
7 to apply said wage and hour provisions to them. Accord-
8 ingly, conservation officers are hereby excluded from the pro-
9 visions of said wage and hour law and department of civil
10 service guidelines, rules or regulations relating thereto. They
11 shall be subject to duty whenever and wherever required by
12 the functions, services and needs of the department.

13 The minimum workweek for conservation officers shall be
14 five eight hour days and the maximum number of days and
15 hours per day shall be unrestricted. Conservation officers
16 shall not be entitled to compensatory time for days or hours
17 worked in excess of the minimum in a work day or week except

18 a compensatory day shall be granted for any holiday worked.
19 In lieu of any benefits to which they would have been entitled
20 by the coverage from which they are hereby excluded, con-
21 servation officers, except those classified by the West Virginia
22 civil service system as conservation officer IV and natural re-
23 sources administrator, shall receive in addition to their salaries
24 an annual premium payment of two thousand one hundred
25 dollars which sum shall be prorated and included in the pay-
26 ment of their salary checks.

27 This section shall not apply to special nor emergency con-
28 servation officers appointed under the authority of section one
29 of this article.

CHAPTER 29

(S. B. 243—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creation of a fee for examination and investigation of an application for certificate of incorporation for an industrial loan company.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.

1 Persons desiring to form an industrial loan company

2 shall sign and acknowledge an agreement of incorporation,
3 as provided in article one of this chapter.

4 The agreement shall be delivered to the secretary of
5 state, who, after the agreement has been approved in
6 writing by the commissioner of banking, shall issue to the
7 incorporators his certificate under the great seal of the
8 state as provided in article one of this chapter: *Provided*,
9 That hereafter no charter shall be issued to any industrial
10 loan company under the provisions of this article, nor
11 shall any amendment under general law or under the
12 provisions of this article be made to the charter of any
13 existing industrial loan company coming within the terms
14 of this article, whether heretofore or hereafter organized,
15 until the application for such charter or for an amend-
16 ment to such already existing charter has been approved
17 in writing by the commissioner of banking. Application
18 for a new charter shall be filed in duplicate with the com-
19 missioner of banking, accompanied by an examination
20 and investigation fee of one thousand dollars payable to
21 the commissioner. Such charter, when issued, shall be
22 filed and recorded as provided by law for general corpo-
23 rations organized under the laws of this state. The provi-
24 sions of section five, article two, chapter thirty-one-a,
25 insofar as the same relates to financial institutions, other
26 than banking institutions, shall apply to the application
27 and issuance of a certificate or license by the commissioner
28 to an industrial loan company.

CHAPTER 30

(Com. Sub. for S. B. 558—By Mr. Jones)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, chapter twenty-eight of

said code; to repeal section three of said article one; to amend and reenact sections two, four and five, article three of said chapter; and to repeal section three of said article three, all relating to commitment of youthful male and female offenders to the custody of the commissioner of corrections; age limits; physical, educational and psychological examinations; cost of examinations to be borne by committing county; alternative examinations ordered by court prior to disposition; results of examinations and court orders to accompany youths when committed; authority of commissioner of corrections for transfer and placement of youths; examination of female youth to be in presence of a matron; compensation of physician and matron for examination of female youth.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article one, chapter twenty-eight of said code be amended and reenacted; that section three of said article one be repealed; that sections two, four and five, article three, chapter twenty-eight of said code be amended and reenacted; and that section three of said article three be repealed, all to read as follows:

Chapter

25. Department of Corrections.

28. State Correctional and Penal Institutions.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-7. Physical, educational and psychological examinations; transfer and placement.

1 Every youthful offender committed hereunder shall be
 2 given complete physical, educational and psychological
 3 examinations in the same manner and under the same
 4 protections and requirements of subsections (b) and (c),
 5 section two, article one, chapter twenty-eight of this
 6 code. In addition thereto, all admission, transfer and place-

7 ment requirements and authority provided to the com-
8 missioner in subsections (d) and (e), section two, article
9 one, chapter twenty-eight of this code shall be applicable.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

Article

1. Commitment of Youthful Male Offenders.
3. Industrial Home for Girls.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

1 (a) Any male youth between the ages of ten and
2 eighteen years may be committed to the custody of the
3 commissioner of corrections by a circuit court of this state
4 in the manner prescribed in article five, chapter forty-nine
5 of this code; and further, any male youth who has been
6 adjudged delinquent pursuant to subdivision one, section
7 four, article one, chapter forty-nine of this code, who,
8 as a result thereof, was placed on probation and has been
9 found, in a proceeding pursuant to the procedural require-
10 ments of article five, chapter forty-nine of this code, to
11 have violated a term of probation, prior to the attainment
12 of his twentieth birthday, which constitutes a criminal
13 offense, may be committed to the custody of the commis-
14 sioner of corrections as a youthful offender.

15 (b) Every youth committed hereunder shall, following
16 the dispositional proceeding, be transferred to the place
17 or places designated by the commissioner of corrections
18 for complete physical, educational and psychological
19 examinations, including all appropriate tests, to be com-
20 pleted as soon as possible, the completion of the physical
21 examinations to be within twenty days. Such youth
22 shall be housed in a manner so as to prevent the spread of
23 infectious disease. Following disposition and prior to
24 transfer to the custody of the commissioner of corrections,
25 each youth shall be allowed to visit with his relatives,
26 without being committed to jail, for a period of not less

27 than one hour. The cost of the examinations herein shall
28 be borne by the committing county. The youth shall be
29 provided all treatment and rehabilitation indicated by
30 such examinations.

31 In lieu of the physical examinations and tests provided
32 for herein, the court may, in the absence of objection, have
33 the county health officer or other local health care facility
34 perform physical and mental examinations and tests, so
35 long as such examinations and tests are performed prior
36 to the dispositional proceeding. Except as otherwise pro-
37 vided by law, no child shall be committed to a jail follow-
38 ing a dispositional proceeding solely to await a physical,
39 educational or mental examination or the results thereof.

40 (c) All such examinations shall be private. No youth
41 who is mentally ill or significantly mentally retarded shall
42 be committed to, or retained by, the commissioner of
43 corrections, but shall be returned to the committing court
44 for further disposition. No youth who has a serious in-
45 fectious disease shall be retained in the custody of the
46 commissioner of corrections, but shall be transferred to an
47 appropriate treatment facility. Detailed medical records
48 shall be kept of every youth.

49 (d) The results of any such physical, educational and
50 psychological examinations, together with a copy of the
51 petition, the adjudicatory order and the dispositional
52 order shall accompany every youth committed to the
53 commissioner of corrections, without which such youth
54 shall not be accepted. The commissioner, or his designated
55 representative, shall review the records of each youth
56 committed to assure that no youth is illegally detained in
57 an inappropriate facility or custodial situation.

58 (e) The commissioner of corrections shall have the
59 authority to transfer and place such youth in any of the
60 centers or homes or halfway programs which shall be
61 established, and in less restrictive settings, whether under
62 his jurisdiction or private nonprofit residential facilities,
63 as he may deem appropriate to promote the rehabilitation
64 of such youth. To the extent possible, no youth under the

65 age of fifteen shall be in regular contact with youths
66 between the ages of sixteen and eighteen.

ARTICLE 3. INDUSTRIAL HOME FOR GIRLS.

§28-3-2. Commitment; age limits.

§28-3-4. Physical, educational and psychological examinations; admission; transfer and placement.

§28-3-5. Compensation of physician and matron.

§28-3-2. Commitment; age limits.

1 Any female youth between the ages of twelve and eigh-
2 teen years may be committed to the custody of the com-
3 missioner of corrections by a circuit court of this state in
4 the manner described in article five, chapter forty-nine of
5 this code; and further, any such youth who has been
6 adjudged delinquent pursuant to subdivision one, section
7 four, article one, chapter forty-nine of this code, who,
8 as a result thereof, was placed on probation and has been
9 found in a proceeding pursuant to the procedural require-
10 ments of article five, chapter forty-nine of this code to
11 have violated a term of probation, prior to the attainment
12 of her twentieth birthday, which constitutes a criminal
13 offense, may be committed to the custody of the commis-
14 sioner of corrections.

**§28-3-4. Physical, educational and psychological examinations;
admission; transfer and placement.**

1 Every female youth committed hereunder shall be
2 given complete physical, educational and psychological
3 examinations in the same manner and under the same
4 protections and requirements of subsections (b) and (c),
5 section two, article one, chapter twenty-eight of this code.
6 In addition thereto, all such examinations shall be in pri-
7 vate, but there shall be present during the examination a
8 woman of good character and of mature years. In addi-
9 tion thereto, all admission, transfer and placement
10 requirements and authority provided to the commissioner
11 in subsections (d) and (e), section two, article one, chap-
12 ter twenty-eight of this code shall be applicable.

§28-3-5. Compensation of physician and matron.

1 In a proceeding for the commitment of a female youth

2 to the commissioner of corrections, the compensation of
3 the physician and of the matron present during such
4 examination shall be fixed by the court and taxed as other
5 costs.

CHAPTER 31

(Com. Sub. for H. B. 1091—By Mr. Damron and Mr. Mathis)

[Passed March 8, 1980; in effect December 31, 1980. Approved by the Governor.]

AN ACT to repeal section four, article one, chapter seven; sections five-a and five-a (one), article two, chapter eleven; section seven, article one, chapter nineteen; and section two, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and five-a, article one; section four, article seven, chapter seven; and to further amend said article by adding thereto four new sections, designated sections six-a, six-b, six-c and six-d, all relating to compensation of county officers; duties of county officials; additional duties of assessors; duties of county commissioners and payment for services other than services in court.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **County Commissions Generally.**

7. **Training Programs for County Employees, etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees, their Number and Compensation.**

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-5. Duties of county commissioners; payment for services other than services in court.

§7-1-5a. Salaries of county commissioners.

§7-1-5. Duties of county commissioners; payment for services other than services in court.

1 It shall be the duty of the county commissioners of each
2 county to visit each quarter and inspect institutions within their
3 county for housing and caring for the poor, to inspect the jails,
4 to arrange for the feeding and care of the prisoners therein, to
5 investigate the conditions of the poor within their county, not
6 housed within such institutions; to visit detention homes for
7 children within their counties, if any; to visit and inspect bridg-
8 es and bridge approaches under their control; to provide for
9 and have general supervision over the repair and maintenance
10 of the county courthouse, jails, houses for the poor and other
11 county property, so as to prevent the undue deterioration there-
12 of; to supervise and control the maintenance and operation of
13 airport or airports owned or operated by the county commis-
14 sion; to supervise and control the purchase, erection and
15 maintenance of airport facilities; to supervise and control the
16 purchase of furniture, fixtures and equipment and janitors'
17 and other supplies for their county; to attend the annual meet-
18 ings of county assessors and such district meetings as may be
19 called by the state tax commissioner on matters pertaining to
20 the work of the county assessors and the county com-
21 mission as boards of review and equalization; to review and
22 equalize the assessments made by the assessors; to inspect and
23 review the lists of property, both real and personal, made up
24 by the assessor and his deputies for taxable purposes, and to
25 point out to the assessor any property, real and personal, which
26 the said assessors of their respective counties may have over-
27 looked or omitted to place on said tax lists; to call to the at-
28 tention of the assessor all real estate or personal property be-
29 longing to churches, lodges, schools or other charitable insti-
30 tutions which may have been overlooked or omitted by the
31 assessor or his deputies in making up his lists of property for
32 entry on the land and personal property books; to supervise
33 the general management of the fiscal affairs and business of

34 each county; and as a further part of their duties they shall be
35 empowered to purchase, lease, rent, control, supervise, inspect,
36 maintain and erect public parks, playgrounds and recreational
37 facilities, to purchase, lease or rent equipment therefor and to
38 employ qualified recreational directors and personnel; to con-
39 struct new Four-H camps on county property; to operate stone
40 quarries and sand deposits on county-owned or leased proper-
41 ty; to construct buildings for or aid in constructing or equip-
42 ping buildings for emergency services on sites approved by the
43 office of emergency services; to operate dog pounds for county-
44 municipalities; to purchase, lease, rent, control, supervise, in-
45 spect, maintain and erect public markets and to purchase, rent
46 or lease equipment therefor and to employ qualified personnel
47 to operate such public markets; and as a further part of their
48 duties they shall be empowered to purchase, lease, rent, con-
49 trol, supervise, inspect, maintain and erect county mental health
50 clinics and engage in any program designated for the better-
51 ment of the mental and physical well-being of the residents of
52 their county and to cooperate with any public or private agency
53 for these purposes; to establish and participate in regional
54 planning and development councils; to establish and partici-
55 pate in county commissions on intergovernmental relations as
56 required by section three-q of this article; to establish and par-
57 ticipate in county commissions on crime, delinquency and cor-
58 rections as required by section three-r of this article; to con-
59 duct a survey of all orphan roads within the county, which
60 roads shall include roads or highways, not situated within a
61 municipality, which are open to the public and which serve
62 two or more persons, but shall exclude roads comprising or
63 included within the state road system as defined by section two,
64 article four, chapter seventeen of this code or comprising or
65 included within any county road or highway system and which
66 shall also exclude any road brought into the state road system
67 for purposes of maintenance only by the commissioner of high-
68 ways pursuant to statutory or regulatory authority; to prepare
69 an inventory of all such orphaned roads within the county,
70 which inventory shall be made available to any agency of the
71 state or federal government upon request, and be filed and
72 recorded in the office of the county clerk.

73 Compensation shall be allowed and paid out of the county
74 treasury, in the same manner as salaries are paid, to each
75 county commissioner of each county (except as otherwise pro-
76 vided by law for the county of Ohio) for services performed
77 for such county concerning the visiting of the poor, inspection
78 of jails, bridges and bridge approaches and for visiting deten-
79 tion homes for children and for providing for and supervising
80 the repair and maintenance of the county courthouse, jails,
81 houses for the poor and other county property; for supervising
82 and controlling the maintenance and operation of airport or
83 airports owned or operated by the county commission
84 and supervising and controlling the purchase, erection and
85 maintenance of airport facilities; for supervising and controll-
86 ing the purchase of furniture, fixtures and equipment and jani-
87 tors' and other supplies for their county; for attending the an-
88 nual meeting of assessors and such district meetings as may be
89 called by the state tax commissioner on matters pertaining to
90 the work of assessors and county commissions as boards
91 of review and equalization; for reviewing and equalizing the
92 assessments made by the assessors; for inspecting and review-
93 ing the lists of property, both real and personal, made up by the
94 assessor and his deputies for taxable purposes and for pointing
95 out to the assessor any property, real and personal, which the
96 said assessors of their respective counties may have overlooked
97 or omitted to place on said tax lists; for calling to the attention
98 of the assessor all real estate or personal property belonging to
99 churches, lodges, schools or other charitable institutions which
100 may have been overlooked or omitted by the assessor or his
101 deputies in making up their lists of property for entry on the
102 land and personal property books; for purchasing, leasing,
103 renting, controlling, supervising, inspecting, maintaining and
104 erecting public parks, playgrounds and recreational facilities
105 and the purchasing, leasing or renting the equipment therefor
106 and employing qualified recreational directors and personnel
107 therefor; for constructing new Four-H camps on county prop-
108 erty; operating stone quarries and sand deposits on county-
109 owned or leased property; constructing buildings for or aiding
110 in construction or equipping buildings for emergency services
111 on sites approved by the office of emergency services; operating
112 dog pounds for county-municipalities; to purchase, lease, rent,

113 control, supervise, inspect, maintain and erect public markets,
114 and to purchase, rent or lease equipment therefor and to em-
115 ploy qualified personnel to operate such public markets; for
116 constructing fallout shelters and aiding individuals to construct
117 fallout shelters through furnishing available information; for
118 purchasing, leasing, renting, controlling, supervising, inspect-
119 ing, maintaining or erecting county mental health clinics or en-
120 gaging in programs for the betterment of the mental or physical
121 well-being of the residents of their county; for conducting a
122 survey of all abandoned and dilapidated buildings or structures
123 within the county and to prepare an inventory thereof, which
124 inventory shall be made available to any agency of state or
125 federal government or to local governmental agencies upon
126 request; for establishing and participating in regional planning
127 and development councils; to conduct a survey of all orphan
128 roads within the county, which roads shall include roads or
129 highways, not situated within a municipality, which are open
130 to the public and which serve two or more persons, but shall
131 exclude roads comprising or included within the state road
132 system as defined by section two, article four, chapter seven-
133 teen of this code or comprising or included within any county
134 road or highway system and which shall also exclude any road
135 brought into the state road system for purposes of maintenance
136 only by the commissioner of highways pursuant to statutory or
137 regulatory authority; to prepare an inventory of all such or-
138 phaned roads within the county, which inventory shall be made
139 available to any agency of the state or federal government upon
140 request, and be filed and recorded in the office of the county
141 clerk; for establishing and participating in county commis-
142 sions on intergovernmental relations as required by section
143 three-q of this article; for establishing and participating in
144 county commissions on crime, delinquency and correction as
145 required by section three-r of this article and for supervising
146 the general management of the fiscal affairs and business of
147 each county, within their counties, and other business by such
148 commissioners.

§7-1-5a. Salaries of county commissioners.

1 All county commissioners shall be paid compensation
2 out of the county treasury in amounts and according to

3 the schedule hereafter set forth for each class of county
 4 as determined by the provisions of section three, article
 5 seven, chapter seven: *Provided*, That as to any county
 6 having a tribunal in lieu of a county commission, the
 7 county commissioners of such county may be paid less than
 8 the minimum compensation limits of the county commission
 9 for the particular class of such county.

10	Class I	\$16,100
11	Class II	12,300
12	Class III	11,500
13	Class IV	8,200
14	Class V	5,500
15	Class VI	3,200
16	Class VII	1,300

17 The compensation hereinabove provided shall be paid on
 18 and after January one, one thousand nine hundred eighty-one,
 19 to each county commissioner. Within each county, every
 20 county commissioner whose term of office commenced prior to
 21 the first day of January, one thousand nine hundred eighty-one,
 22 shall receive the same annual compensation as commissioners
 23 commencing a term of office on or after that date by virtue of
 24 the new duties imposed upon county commissioners pursuant
 25 to the amended provisions of section five of this article.

**ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES,
 ETC.; COMPENSATION OF ELECTED COUNTY OF-
 FICIALS; COUNTY ASSISTANTS, DEPUTIES AND
 EMPLOYEES, THEIR NUMBER AND COMPENSATION.**

- §7-7-4. Compensation of elected county officials other than county com-
 missioners for each class of county; effective date.
- §7-7-6a. Assessors; additional compensation; additional duties.
- §7-7-6b. Additional compensation of assessors according to county classifica-
 tion.
- §7-7-6c. Additional compensation of assessor.
- §7-7-6d. Collection of head tax on dogs; duties of assessor and sheriff; regis-
 tration of dogs; disposition of head tax; taxes on dogs not collected
 by assessor.

§7-7-4. Compensation of elected county officials other than county commissioners for each class of county; effective date.

1 For the purpose of determining the compensation to be
 2 paid to the elected county officials of each county, the follow-
 3 ing compensations for each county office by class are hereby
 4 established and shall be used by each county commission in
 5 determining the compensation of each of their county officials
 6 other than compensation of members of the county commis-
 7 sion:

		County	Circuit		Prosecuting	
	Sheriff	Clerk	Clerk	Assessor	Attorney	
10	Class I	\$19,200	\$26,300	\$26,300	\$19,200	\$36,500
11	Class II	19,200	23,000	23,000	19,200	34,500
12	Class III	17,900	21,000	21,000	19,200	25,000
13	Class IV	17,300	17,500	17,500	17,300	21,500
14	Class V	15,400	15,500	15,500	15,400	18,500
15	Class VI	12,200	12,200	12,200	12,200	12,000

16 Any county clerk, circuit clerk, joint clerk of the county
 17 commission and circuit court, if any, county assessor, sheriff
 18 and prosecuting attorney of a Class I county, any assessor of
 19 a Class II and Class III county, any sheriff of a Class II and
 20 Class III county, and any prosecuting attorney of a Class II
 21 county shall devote full time to his public duties to the ex-
 22 clusion of any other employment: *Provided*, That any such
 23 public official, whose term of office begins when his county's
 24 classification imposes no restriction on his outside activities,
 25 shall not be restricted on his outside activities during the re-
 26 mainder of the term for which he is elected. The compensa-
 27 tion hereinabove provided shall be paid on and after January
 28 one, one thousand nine hundred and eighty-one, to each elected
 29 county official.

30 In the case of a county that has a joint clerk of the county
 31 commission and circuit court, the compensation of the joint
 32 clerk shall be fixed in an amount twenty-five percent higher
 33 than the compensation would be fixed for the county clerk
 34 if it had separate offices of county clerk and circuit clerk.

§7-7-6a. Assessors; additional compensation; additional duties.

1 In addition to the salary or compensation provided elsewhere
2 in this article, the county commission of each county shall pay
3 to the assessor, on an annual basis, on and after July one, one
4 thousand nine hundred seventy-seven, additional compensation
5 in accordance with the provisions of this section and section
6 six-b of this article for such additional duties required of him by
7 this section.

8 To receive such additional compensation, the following
9 duties are hereby imposed upon every assessor of this state:

10 1. He shall annually complete a sales ratio analysis in a
11 manner prescribed by the state tax commissioner.

12 2. He shall present to the tax commissioner a list of real
13 property transfers of the prior assessment year by December
14 first annually.

15 3. He shall on or before December first of each year supply
16 a list of new construction and improvements exceeding one
17 thousand dollars of the previous assessment year on forms
18 prescribed by the state tax commissioner.

19 4. He shall on or before December first of each year supply
20 a list of new businesses added to the assessment rolls and
21 businesses that have discontinued operations in the previous
22 assessment year and been removed from the assessment rolls.

23 5. He shall provide assistance to the tax commissioner to
24 disseminate information with respect to the taxation, classifi-
25 cation and valuation of nonutility and public utility property
26 to the end that all property shall be more equally and uni-
27 formly assessed throughout the state.

28 6. He shall annually assist the tax commissioner in deter-
29 mining the current use of such real property in his county
30 as the tax commissioner may require to accomplish a uniform
31 appraisal and assessment of real property.

32 The duties hereinbefore listed must be substantially com-
33 pleted by the assessor no later than the first day of November
34 of each year, and each assessor shall certify to the tax com-
35 missioner that he has substantially completed such duties in

36 accordance with requirements of the tax commissioner. If
37 at this time there has been substantial completion of the above
38 duties to the satisfaction of the tax commissioner, the tax
39 commissioner shall, but no later than the fifteenth day of
40 November of each year, certify to the county commission that
41 the assessor has substantially performed these duties, and is
42 entitled to the remuneration provided for in section six-b of
43 this article.

§7-7-6b. Additional compensation of assessors according to county classification.

1 For the purpose of determining the additional compensa-
2 tion to be paid to the county assessor of each county for the
3 additional duties provided by section six-a of this article, the
4 following compensations for each county assessor by class,
5 as provided in section three of this article, are hereby estab-
6 lished and shall be used by each county commission in deter-
7 mining the compensation of each county assessor; for asses-
8 sors in Class I counties, twelve thousand dollars for the cal-
9 endar year one thousand nine hundred and eighty, and eleven
10 thousand dollars for each calendar year thereafter; for asses-
11 sors in Class II counties, six thousand dollars; for assessors
12 in Class III counties, five thousand dollars; for assessors in
13 Class IV counties, two thousand five hundred dollars; for
14 assessors in Class V counties, one thousand five hundred dol-
15 lars; and for assessors in Class VI counties, one thousand
16 dollars.

17 Notwithstanding this section or any other section of the
18 code to the contrary, in no event shall the additional compen-
19 sation paid to the county assessors for performance of addi-
20 tional duties as provided in section six-a of this article be less
21 than the additional compensation such county assessors re-
22 ceived January one, one thousand nine hundred seventy-six.

§7-7-6c. Additional compensation of assessor.

1 The county commission of each county shall allow the
2 assessor a reasonable compensation, not exceeding ten percent
3 of his salary, as provided by section four of this article, for
4 such work as may be required of him under article one, chap-
5 ter nineteen of this code, by the commissioner of agriculture,

6 and no county commission shall allow pay to assessor for
7 performance of duties herein prescribed until such assessor
8 has received a certificate that his reports are completed and
9 satisfactory to said commissioner.

**§7-7-6d. Collection of head tax on dogs; duties of assessor and
sheriff; registration of dogs; disposition of head tax;
taxes on dogs not collected by assessor.**

Am. 19-20-?

1 It shall be the duty of the county assessor and his deputies
2 of each county within the state, at the time they are making
3 assessment of the personal property within such county, to
4 assess and collect a head tax of one dollar on each male or
5 spayed female dog and of two dollars on each unspayed fe-
6 male dog; and in addition to the above, the assessor and his
7 deputies shall have the further duty of collecting any such head
8 tax on dogs as may be levied by the ordinances of each and
9 every municipality within the county. In the event that the
10 owner, keeper, or person having in his possession or allowing
11 to remain on any premises under his control any dog above
12 the age of six months, shall refuse or fail to pay such tax,
13 when the same is assessed or within fifteen days thereafter, to
14 the assessor or deputy assessor, then such assessor or deputy
15 assessor shall certify such tax to the county dog warden; if
16 there be no county dog warden he shall certify such tax to the
17 county sheriff, who shall take charge of the dog for which the
18 tax is delinquent and impound the same for a period of fif-
19 teen days, for which service he shall be allowed a fee of one
20 dollar and fifty cents to be charged against such delinquent
21 taxpayer in addition to the taxes herein provided for. In case
22 the tax and impounding charge herein provided for shall not
23 have been paid within the period of fifteen days, then the
24 sheriff may sell the impounded dog and deduct the impound-
25 ing charge and the delinquent tax from the amount received
26 therefor, and return the balance, if any, to the delinquent tax-
27 payer. Should the sheriff fail to sell the dog so impounded
28 within the time specified herein, he shall kill such dog and
29 dispose of its body.

30 At the same time as the head tax is assessed, the assessor
31 and his deputies shall, on the forms prescribed under section

32 four, article twenty, chapter nineteen of this code, take down
33 the age, sex, color, character of hair (long or short) and breed
34 (if known) and the name and address of the owner, keeper or
35 harbinger thereof. When the head tax, and extra charges, if
36 any, are paid, the officer to whom payment is made shall issue
37 a certificate of registration and a registration tag for such dog.

38 In addition to the assessment and registration above pro-
39 vided for, whenever a dog either is acquired or becomes six
40 months of age after the assessment of the personal property of
41 the owner, keeper or harbinger thereof, the said owner, keeper
42 or harbinger of said dog shall, within ten days after the acqui-
43 sition or maturation, register the said dog with the assessor, and
44 pay the head tax thereon unless the prior owner, keeper or
45 harbinger paid the head tax.

46 All certificates of registration and registration tags issued
47 pursuant to the provisions of this section shall be issued for
48 the fiscal year and shall be valid from the date on which issued
49 until the thirtieth day of June of that fiscal year, or until
50 reissued by the assessor or his deputy in the regular perfor-
51 mance of his duties, but in no case shall previous registration
52 tags be valid after September thirtieth of the next ensuing
53 fiscal year.

54 The assessor collecting the head tax on dogs shall be al-
55 lowed a commission of ten percent upon all such taxes col-
56 lected by him and shall turn in to the county treasurer ninety
57 percent of such taxes so collected, as are levied by this section;
58 and the assessor shall turn over to the treasurer or other proper
59 officer of each and every municipality within the county ninety
60 percent of such taxes levied by the ordinances of such muni-
61 cipality. All such dog taxes, except those belonging to muni-
62 cipalities, shall be accredited to the dog and kennel fund pro-
63 vided for in section ten, article twenty, chapter nineteen of this
64 code. Such dog taxes as are collected for and turned over to
65 municipalities shall be deposited by the proper officer of such
66 municipality to such fund and shall be expended in such man-
67 ner as the law of such municipality may provide. All taxes on
68 dogs not collected by the assessor shall be collected by the
69 regular tax collecting officer of the county and placed to the
70 credit of the dog and kennel fund.

CHAPTER 32

(S. B. 63—By Mr. Gilligan)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, seven, seven-a, eight and nine, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting counties to cooperate in the development of regional correctional centers for both adult and youth offenders.

Be it enacted by the Legislature of West Virginia:

That sections two, five, seven, seven-a, eight and nine, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COUNTY PROPERTY.

§7-3-2. Courthouse, jail and offices.

§7-3-5. County commissions authorized to acquire and convey real estate and contract for construction, etc., and rental of courthouse, jail or other public building.

§7-3-7. Bonds for cost of real estate and public buildings.

§7-3-7a. Bonds for construction or renovation of county jail or regional correctional center.

§7-3-8. Creation and enforcement of lien of bondholders.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

§7-3-2. Courthouse, jail and offices.

1 The county commission of every county, at the ex-
2 pense of the county, shall provide at the county seat
3 thereof a suitable courthouse and jail, together with
4 suitable offices for the judge of the circuit court and
5 judges of courts of limited jurisdiction, clerks of circuit
6 courts, courts of limited jurisdiction and of the county
7 commission, assessor, sheriff, prosecuting attorney, county
8 superintendent of schools, and surveyor, and all other
9 offices as are or may be required by law: *Provided*, That
10 the courthouse, including any annex or other facility
11 housing the courts and offices herein set out, (excepting

12 all facilities that are on a twenty-four-hour basis), shall
13 be open to the public Monday through Saturday during
14 the hours prescribed by the county commission by an
15 order duly recorded in the order book of the commission,
16 excluding Sundays and national or state holidays, and
17 may, with the consent of the county commission in
18 counties having a population in excess of one hundred
19 thousand be closed on Saturday: *Provided, however,*
20 That the county commission of every county having a
21 population in excess of two hundred thousand may pro-
22 vide at the county seat or elsewhere in the county, as
23 the county commission shall determine, a suitable jail
24 or jails: *Provided further,* That the county commission
25 of any county, regardless of population, may, as provided
26 in chapter eight, article twenty-three of the code of West
27 Virginia, contract with the county commissions of one or
28 more other counties within this state for the erection,
29 construction, equipment, leasing and renting of a regional
30 correctional center for either adult or youth offenders,
31 at a location mutually agreeable to the contracting parties
32 and not necessarily at the county seat, which will
33 serve each county entering into the contract. The county
34 commission shall keep the courthouse, jail and other
35 offices in constant and adequate repair, and supplied
36 with the necessary heat, light, furniture, record books,
37 and janitor service, and, except as to the office for the
38 judge of the circuit court, with the necessary stationery
39 and postage, and other things as shall be necessary; but
40 all of the public records, books and papers belonging or
41 appertaining to the county surveyor's office shall be
42 delivered to the clerk of the county commission and
43 retained by him in his official possession and under his
44 control and shall constitute a part of the public records,
45 books and papers of his office. All courthouses, jails and
46 offices hereafter erected shall be built of stone and brick,
47 or stone or brick, or other equally fireproof materials,
48 and the offices shall be fireproof or be furnished with
49 fireproof vaults or safes. The jails shall be well secured,
50 and sufficient for the convenient accommodation of those
51 who may be confined therein, and so that the convicts
52 may be in apartments separate from each other, and

53 from the other prisoners; every apartment shall be so
54 constructed that it can be kept comfortable. The county
55 commission may also provide other necessary offices and
56 buildings, and may, by purchase or otherwise, acquire
57 as much land as may be requisite or desirable for county
58 purposes, and may suitably enclose, improve and em-
59 bellish the lands so acquired.

60 Subject to the conditions hereinabove set forth with
61 respect to the site of the courthouse, jail, and other
62 offices, the commission may, from time to time, as may
63 seem to it proper, provide, at the expense of the county,
64 a new or other building or buildings to be used for the
65 courthouse and jail, or for either, together with suit-
66 able offices, as aforesaid, and for that purpose may
67 acquire, by purchase or otherwise, and hold any lands,
68 or lands and buildings, which may be necessary, and
69 may enclose, improve and embellish the same. When
70 any new or other building or buildings shall be ready
71 for occupancy, the county commission shall make an
72 order declaring that, on a day to be therein named,
73 the new or other building or buildings shall become
74 the courthouse, or jail, or both the courthouse and jail
75 of the county, and shall cause copies of the order to be
76 posted at the front door of the new as well as of the
77 old courthouse, at least twenty days before the day
78 named in the order; and on and after the day named
79 the new or other building or buildings shall become,
80 respectively, the courthouse, or jail, or both the court-
81 house and jail of the county in all respects and for all
82 purposes. After the change shall have been made the
83 county commission may sell or otherwise dispose of,
84 as may seem to it proper, the building or buildings pre-
85 viously used as a courthouse and jail, or either, and the
86 land on which they are, or either is, situated, and of
87 the interest of the county therein.

**§7-3-5. County commissions authorized to acquire and convey
real estate and contract for construction, etc., and
rental of courthouse, jail or other public building.**

1 The county commission of any county is hereby au-
2 thorized and empowered to acquire real estate and to

3 convey real estate and to enter into a contract, or lease,
4 or both, with the United States government, or any
5 federal agency authorized to make or enter into a con-
6 tract, or lease, or with any bank or financial institution,
7 or with any individual or persons for the erection, con-
8 struction, equipment, leasing and renting of a courthouse,
9 hospital, other public buildings, or jail, with an option
10 to purchase the building and to provide for the payment
11 of a yearly rental for the building by the commission:
12 *Provided*, That any county commission may, as provided
13 in chapter eight, article twenty-three of the code of West
14 Virginia, also contract with one or more other county
15 commissions within this state for the erection, construc-
16 tion, equipment, leasing and renting of a regional cor-
17 rectional center for either adult or youth offenders at a
18 location mutually agreeable to the contracting parties
19 and not necessarily at the county seat. The county com-
20 mission of any county is also authorized to contract with
21 the United States government, or any federal agency
22 authorized to make or enter into a contract, or any bank
23 or financial institution, or any individual or persons, to
24 the end that the United States government, or any of its
25 agencies, or agents thereunto duly authorized, or bank
26 or financial institution or individual or persons, may
27 for and on behalf of any county commission, build,
28 erect, construct, equip or furnish upon the property any
29 such building, or buildings, including a hospital; and to
30 contract with the United States government, or any
31 federal agency, or bank, or financial institution, or indi-
32 vidual, or persons, for the lease, or rental, of the build-
33 ing or buildings, with the privilege and authority of
34 renewing any lease from year to year, for any period of
35 years, not exceeding thirty, with the right to purchase
36 the building, or buildings, and real estate on which the
37 building or buildings are situated, and to apply toward
38 the purchase price thereof any and all rentals paid to
39 the United States government, or agency, or bank or
40 financial institution, or individual, or persons, under the
41 provisions of this act; and the county commission shall
42 pay to the United States government, or any federal
43 agency, or bank, or financial institution, or individual,
44 or persons, the yearly rental, or rentals, for the use and

45 occupancy of the building, or buildings, if and when
46 they are constructed, which yearly rental, or rentals,
47 in the aggregate, may not exceed the total amount, and
48 the interest thereon expended by the United States
49 government, or agency or bank or financial institution,
50 or individual, or persons, on the project, or projects,
51 and the said yearly rentals shall be paid out of levies
52 laid within the constitutional debts limitations; and to
53 do any and all other things lawfully required by the
54 United States government, or any federal agency, or
55 bank, or financial institution, or individual, or persons,
56 which are necessary and proper to effectuate the purpose
57 of this act.

§7-3-7. Bonds for cost of real estate and public buildings.

1 Any county commission is likewise authorized and em-
2 powered to acquire real estate for, construct, equip, fur-
3 nish and maintain a courthouse, hospital or other public
4 buildings or jail, including a regional correctional center
5 for either adult or youth offenders which is developed
6 jointly by one or more counties, and to borrow funds from
7 the United States government, the public works adminis-
8 tration, or other governmental agency authorized to make
9 loans, or any bank, or financial institution authorized by
10 law to make loans, or any individual, or persons for the
11 purpose of building, constructing, furnishing and equip-
12 ping a courthouse, hospital, other buildings or jail, and for
13 the purpose of acquiring real estate therefor, and shall
14 have the right to acquire by purchase, condemnation, gift
15 or otherwise, real estate on which to build the courthouse,
16 hospital, other buildings or jail, including a regional cor-
17 rectional center for either adult or youth offenders which
18 is developed jointly by one or more counties, within the
19 discretion of the commission. The commission is authorized
20 and empowered to issue bonds for the purpose of paying
21 the cost of any real estate, building, furnishing and equip-
22 ment and to pledge a sufficient amount of revenue within
23 the constitutional limitations and within the limitations as
24 provided by general law, to pay the principal of the bonds
25 and the interest thereon, within a period not to exceed
26 thirty years. Such court is further authorized and empow-
27 ered to do and perform any and all acts and make all con-

28 tracts necessary to effectuate the general purpose of
29 this act, including the acquisition, by original grant, gift,
30 condemnation, or other lawful means of real estate, and
31 of all necessary permits, easements and other rights in
32 real estate, and title to and possession thereof, or to make
33 any purchase and acquisition with the money borrowed,
34 as provided in this act.

35 The commission shall have authority, and is em-
36 powered, to make contracts, agreements and covenants
37 between it and the United States government, or the
38 public works administration, or other governmental
39 agency, or bank, or financial institution, or individual, or
40 persons for the loan of funds to the commission, and
41 securing payment thereof as they may be able to effectu-
42 ate, subject only to this limitation, that the bonds issued,
43 or given as security thereof, shall be payable out of the
44 levies now provided for by general law and by this act;
45 to be levied by the commission in and for the county;
46 to acquire needed real estate, to construct, equip, furnish
47 and maintain a courthouse, hospital, other public build-
48 ings or jail including a regional correctional center for
49 either adult or youth offenders which is developed jointly
50 by one or more counties, and to make and enter into
51 contracts, and to do and perform all acts as may be
52 necessary for the construction, equipment, operation and
53 maintenance of the courthouse, hospital, other buildings,
54 jail or correctional center, subject to any burdens, restric-
55 tions and encumbrances as it may be necessary to incur
56 and bear, in securing the bonds and the real estate con-
57 struction, equipment and maintenance.

58 Bonds issued hereunder shall be exempt from taxation
59 by the state of West Virginia, or any county therein, or
60 any district or municipality thereof.

**§7-3-7a. Bonds for construction or renovation of county jail
or regional correctional center.**

1 The county commissions of the several counties are
2 hereby authorized to issue revenue bonds for the purpose
3 of constructing, reconstructing and renovating any jail
4 facility used for county prisoners or a regional correc-
5 tional center for either adult or youth offenders which
6 is developed jointly by one or more counties; and for

7 the purpose of retiring the bonds, the county commission
8 may pledge for a period not to exceed twenty years, the
9 funds available to the county under the provisions of
10 section fifteen, article five of this chapter.

§7-3-8. Creation and enforcement of lien of bondholders.

1 There shall be and there is hereby created a statutory
2 mortgage lien upon the real estate, buildings and prop-
3 erty acquired, constructed or built from the proceeds of
4 bonds authorized to be issued under this act, which shall
5 exist in favor of the holder of the bonds, and each of
6 them, and to and in favor of the holder of the interest
7 coupons attached to the bonds, and the courthouse,
8 hospital, other public buildings, or jail or regional cor-
9 rectional center, and the real estate so acquired and used
10 for and in connection therewith, shall remain subject
11 to the statutory mortgage lien until payment in full of
12 the principal and interest of the bonds. Any holder of
13 bonds issued under the provisions of this act, or the
14 holder of any coupons representing interest accrued
15 thereon, may, either at law or in equity, enforce the
16 statutory mortgage lien hereby created and conferred,
17 and may, by proper suit, compel the performance of the
18 duties of the officials of the commission as set forth in
19 this act. If there be default in the payment of the prin-
20 cipal of or interest upon any of the bonds, any court
21 having jurisdiction in any proper action may appoint a
22 receiver to administer the property on behalf of the
23 court with power to charge and collect rents or income
24 sufficient to provide for the payment of the bonds and
25 interest thereon, and for the payment of the operating
26 expenses, and to apply the income, rents or other revenue
27 in conformity with this act and the order providing for
28 the issuance of the bonds.

***§7-3-9. Form and payment of bonds; use of proceeds of bonds.**

1 Any county commission issuing revenue bonds under

*Clerk's Note: This section was amended by this act on March 8, 1980, empowering County Commissions to set the interest rate on revenue bonds. This section was also amended by Com. Sub. for S. B. 444 on March 7, 1980, setting the interest rate on bonds issued by County Commissions at not more than ten percent per annum.

2 the provisions of this article shall thereafter, so long
3 as any such bonds remain outstanding, operate and main-
4 tain said courthouse, hospital, other public buildings, jail
5 or regional correctional center, to provide revenues suf-
6 ficient to pay all operating costs, provide a sinking fund
7 for, and to retire such bonds and pay the interest thereon
8 as the same may become due. The amounts, as and when
9 so set apart by said county commission, shall be remitted
10 to the West Virginia municipal bond commission at least
11 thirty days previous to the time interest or principal pay-
12 ments become due, to be retained and paid out by
13 said commission consistent with the provisions of this
14 article and with the order pursuant to which the bonds
15 have been issued. The West Virginia municipal bond
16 commission is hereby authorized to act as fiscal agent
17 for the administration of such sinking fund under any
18 order passed pursuant to the provisions of this article,
19 and shall invest all sinking funds, as provided by general
20 law. Revenue bonds issued under the provisions of this
21 article are hereby declared to be and to have all the
22 qualities of negotiable instruments. Such bonds shall bear
23 interest at the rate set by the county commission, pay-
24 able semiannually, and shall mature at any time fixed
25 by the county commission, in not more than thirty years
26 from their date. Such bonds shall be sold at a price not
27 lower than a price which, when computed upon standard
28 tables of bond values, will show a net return of not
29 more than the interest rate set by the county commission
30 to the purchaser upon the amount paid therefor. Such
31 bonds may be made redeemable at the option of the
32 county commission at such price and under terms and
33 conditions as said county commission may fix, by its order,
34 prior to the issuance of such bonds. Revenue bonds is-
35 sued hereunder shall be payable at the office of the state
36 treasurer, or a designated bank located either in New
37 York City or in the state of West Virginia.

38 In case any of the officers whose signatures appear
39 on such bonds or coupons shall cease to be such officers
40 before the delivery of such bonds, such signatures shall,
41 nevertheless, be valid and sufficient for all purposes the

42 same as if they had remained in office until such delivery.
43 The county commission shall by order entered prior to
44 the issuance of said bonds, fix the denominations, times
45 and places of payment of such bonds, the principal and
46 interest of which shall be payable in lawful money of
47 the United States of America. The proceeds of such
48 bonds shall be used solely for the payment of the cost
49 of land, buildings, furniture and equipment thereon, and
50 shall be checked out by the county commission under such
51 restrictions as are contained in the order providing for the
52 issuance of said bonds. If the proceeds of such bonds
53 issued for any courthouse, hospital, other public build-
54 ings, jail or regional correctional center, shall exceed
55 the cost thereof, the surplus shall be paid into the fund
56 herein provided for the payment of principal and inter-
57 est upon such bonds. Such fund may be used for the pur-
58 chase or redemption of any of the outstanding bonds pay-
59 able from such fund at the market price, but at not ex-
60 ceeding the price at which any of such bonds shall in the
61 same year be redeemable, as fixed by the commission in its
62 said order, and all bonds redeemed or purchased shall
63 forthwith be canceled, and shall not again be issued.

64 Prior to the preparation of definitive bonds, the county
65 commission may, under like restrictions, issue temporary
66 bonds, or interim certificates, with or without coupons,
67 exchangeable for definitive bonds upon the issuance of
68 the latter. Such bonds may be issued without any other
69 proceedings or the happening of any other conditions or
70 things than those proceedings, conditions and things
71 which are specified and required by this article.

CHAPTER 33

(Com. Sub. for S. B. 444—By Mr. Sharpe)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and fourteen,
article three, chapter seven of the code of West Virginia,

one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article sixteen; section fourteen, article eighteen; sections four and six, article nineteen; and section five, article twenty, all of chapter eight of said code; to amend and reenact section fourteen, article one; and section five, article two-a, chapter thirteen of said code; to amend and reenact section ten, article thirteen; and section thirteen, article thirteen-a, chapter sixteen of said code; and to amend and reenact section six, article twenty-four, chapter eighteen of said code, all relating to increasing to ten percent the maximum interest rate that revenue bonds or general obligation bonds issued under these code sections may bear and providing for a corresponding increase in the allowable bond yield.

Be it enacted by the Legislature of West Virginia:

That sections nine and fourteen, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article sixteen; section fourteen, article eighteen; sections four and six, article nineteen; and section five, article twenty, all of chapter eight of said code be amended and reenacted; that section fourteen, article one; and section five, article two-a, chapter thirteen of said code be amended and reenacted; that section ten, article thirteen; and section thirteen, article thirteen-a, chapter sixteen of said code be amended and reenacted; and that section six, article twenty-four, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.**
- 13. Public Bonded Indebtedness.**
- 16. Public Health.**
- 18. Education.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-9. Form and payment of bonds; use of proceeds of bonds.

§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care facilities and other related facilities; financing.

***§7-3-9. Form and payment of bonds; use of proceeds of bonds.**

1 Any county commission issuing revenue bonds under
2 the provisions of this article shall thereafter, so long as
3 any such bonds remain outstanding, operate and maintain
4 said courthouse, hospital, other public buildings, or jail,
5 to provide revenues sufficient to pay all operating costs,
6 provide a sinking fund for, and to retire such bonds and
7 pay the interest thereon as the same may become due.
8 The amounts, as and when so set apart by said county
9 commission, shall be remitted to the West Virginia
10 municipal bond commission at least thirty days previous
11 to the time interest or principal payments become due,
12 to be retained and paid out by said commission consistent
13 with the provisions of this article and with the order
14 pursuant to which such bonds have been issued. The
15 West Virginia municipal bond commission is hereby
16 authorized to act as fiscal agent for the administration
17 of such sinking fund under any order passed pursuant
18 to the provisions of this article, and shall invest all
19 sinking funds, as provided by general law. Revenue bonds
20 issued under the provisions of this article are hereby
21 declared to be and to have all the qualities of negotiable
22 instruments. Such bonds shall bear interest at not more
23 than ten percent per annum, payable semiannually, and
24 shall mature at any time fixed by the county commission,
25 in not more than thirty years from their date. Such
26 bonds shall be sold at a price not lower than a price
27 which, when computed upon standard tables of bond
28 values, will show a net return of not more than eleven
29 percent per annum to the purchaser upon the amount
30 paid therefor. Such bonds may be made redeemable at
31 the option of the county commission at such price and
32 under terms and conditions as said commission may
33 fix, by its order, prior to the issuance of such bonds.
34 Revenue bonds issued hereunder shall be payable at the
35 office of the state treasurer, or some bank in the city of
36 New York.

***Clerk's Note:** This section was amended by this act on March 7, 1980, setting the interest rate on bonds issued by County Commissions at not more than ten percent per annum. The section was also amended by S. B. 63, which passed on March 8, 1980. That act empowers County Commissions to set the interest rate on bonds.

37 In case any of the officers whose signatures appear on
38 such bonds or coupons shall cease to be such officers
39 before the delivery of such bonds, such signatures shall,
40 nevertheless, be valid and sufficient for all purposes the
41 same as if they had remained in office until such delivery.
42 The county commission shall by order entered prior to
43 the issuance of said bonds, fix the denominations, times
44 and places of payment of such bonds, the principal and
45 interest of which shall be payable in lawful money of
46 the United States of America. The proceeds of such bonds
47 shall be used solely for the payment of the cost of land,
48 buildings, furniture and equipment thereon, and shall
49 be checked out by the county commission under such
50 restrictions as are contained in the order providing for
51 the issuance of said bonds. If the proceeds of such bonds
52 issued for any courthouse, hospital, other public build-
53 ings, or jail, shall exceed the cost thereof, the surplus
54 shall be paid into the fund herein provided for the pay-
55 ment of principal and interest upon such bonds. Such
56 fund may be used for the purchase or redemption of
57 any of the outstanding bonds payable from such fund
58 at the market price, but at not exceeding the price at
59 which any of such bonds shall in the same year be re-
60 deemable, as fixed by the commission in its said order,
61 and all bonds redeemed or purchased shall forthwith
62 be canceled, and shall not again be issued.

63 Prior to the preparation of definitive bonds, the county
64 commission may, under like restrictions, issue temporary
65 bonds, or interim certificates, with or without coupons,
66 exchangeable for definitive bonds upon the issuance of
67 the latter. Such bonds may be issued without any other
68 proceedings or the happening of any other conditions
69 or things than those proceedings, conditions and things
70 which are specified and required by this article.

**§7-3-14. Authority to acquire and operate hospitals, clinics,
long-term care facilities and other related facilities;
financing.**

1 The county commission of any county is hereby autho-
2 rized and empowered to acquire by purchase or construc-
3 tion and to thereafter own, equip, furnish, operate, lease,
4 improve and extend a public hospital, clinic, long-term

5 care facility and other related facilities, with all appurte-
6 nances, including the necessary real estate as a site there-
7 for. Any such county public hospital acquired pursuant
8 thereto may include a nurses home and nurses training
9 school. The county commission is further authorized and
10 empowered, upon acquiring a hospital, clinic, long-term
11 care facility or other related facility, to lease to others any
12 or all such facilities for such rentals and upon such terms
13 and conditions as the county commission may deem
14 advisable. For the purpose of paying all or any part of
15 the costs, not otherwise provided, of acquiring, complet-
16 ing, equipping, furnishing, improving or extending such
17 hospital, clinic, long-term care facility or other related
18 facility, the county commission is hereby authorized and
19 empowered by order duly entered of record, to issue and
20 sell the negotiable revenue bonds of such county, which
21 shall be payable solely and only from all or such part of
22 the net revenues from the operation of such county public
23 hospital, clinic, long-term care facility or other related
24 facility as may be provided by said order; and each such
25 revenue bond so issued shall contain a recital that pay-
26 ment or redemption of the bond and payment of the
27 interest thereon is secured by the revenues pledged there-
28 for, and that such bond does not constitute an indebted-
29 ness of such county or the county commission thereof
30 within the meaning of any constitutional or statutory
31 limitation or provision. Such revenue bonds may bear
32 such date or dates, may mature at such time or times
33 not exceeding thirty-four years from their respective
34 dates, may bear interest at such rate or rates not exceed-
35 ing ten percent per annum, may be of such denomination
36 or denominations, may be in such form, may carry such
37 registration privileges, may be made subject to such terms
38 of redemption with or without premium, and may contain
39 such other terms and covenants not inconsistent with
40 this article as may be provided in such order. Such
41 revenue bonds shall be exempt from taxation by the
42 state of West Virginia and the other taxing bodies of the
43 state. In determining the amount of revenue bonds to be
44 issued, there may be included any expenses in connection
45 with and incidental to the issuance and sale of bonds and

46 for the preparation of plans, specifications, surveys and
 47 estimates, interest during the estimated construction
 48 period and for six months thereafter, and a reasonable
 49 amount for working capital and prepaid insurance. Such
 50 bonds may be sold in such manner, at such times and upon
 51 such terms as may be determined by the county commis-
 52 sion to be for the best interests of the county: *Provided,*
 53 That no bonds may be sold upon terms which will result
 54 in the net interest cost of more than eleven percent per
 55 annum computed to maturity of the bonds according to
 56 standard tables of bond values. There may be included
 57 in any such order authorizing the issuance of revenue
 58 bonds such covenants, stipulations and conditions as may
 59 be deemed necessary with respect to the expenditure
 60 of the bond proceeds, the operation and maintenance of
 61 the county public hospital, clinic, long-term care facility
 62 or other related facility, and the custody and application
 63 of the revenues from such operation. The holder of any
 64 bond or bonds may, by mandamus or other appropriate
 65 proceedings, require and compel performance of any
 66 duties imposed by law in connection with the hospital,
 67 clinic, long-term care facility or other related facility,
 68 or any covenant, stipulation or condition that may have
 69 been expressed in such bond order.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article

- 16. **Municipal Public Works; Revenue Bond Financing.**
- 18. **Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health.**
- 19. **Municipal Waterworks and Electric Power Systems.**
- 20. **Combined Waterworks and Sewerage Systems.**

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

1 Such revenue bonds shall bear interest at not more
 2 than ten percent per annum, payable semiannually, or
 3 at shorter intervals, and shall mature at such time or
 4 times, not exceeding forty years, as may be determined

5 by the ordinance or ordinances authorizing the issuance
6 of such bonds. Such bonds may be made redeemable
7 before maturity, at the option of the municipality or
8 municipalities issuing the same, to be exercised by said
9 board, at not more than the par value thereof, and at
10 a premium of not more than five percent, under such
11 terms and conditions as may be fixed by the ordinance
12 or ordinances authorizing the issuance of the bonds. The
13 principal and interest of the bonds may be made pay-
14 able in any lawful medium. Such ordinance or ordinances
15 shall determine the form of the bonds, including the
16 interest coupons to be attached thereto, and shall fix
17 the denomination or denominations of such bonds, and
18 the place or places of the payment of the principal and
19 interest thereof, which may be at any banking institution
20 or trust company within or without the state. When
21 two or more municipalities take joint action under the
22 provisions of this article, the bonds shall be issued by
23 the participating municipalities either as separate
24 or joint bonds, as the governing bodies thereof
25 may agree, and when separate bonds are issued, the
26 amount of the bonds to be issued by each participating
27 municipality shall be fixed by agreement of the govern-
28 ing bodies of the participating municipalities set forth
29 in the ordinance of each participating municipality
30 authorizing the issuance of such bonds. The bonds shall
31 contain a statement on their face that the municipality
32 or municipalities issuing the same shall not be obligated
33 to pay the same, or the interest thereon, except from
34 the special fund derived from the net revenue of the
35 works, or the pro rata part thereof, as provided for in
36 section eleven hereof. All such bonds shall be, and shall
37 have and are hereby declared to have all the qualities
38 and incidents of negotiable instruments, under the Uni-
39 form Commercial Code of this state. Provision may be
40 made for the registration of any of the bonds in the
41 name of the owner as to principal alone; but bonds shall
42 be executed in such manner as the governing body or
43 bodies may direct. The bonds shall be sold by the govern-
44 ing body or bodies in such manner as may be determined
45 to be for the best interest of the municipality or munici-

46 palities: *Provided*, That said bonds shall not be negotiated
47 at a price lower than a price which when computed to
48 maturity upon standard tables of bond values will show
49 a net return of more than ten percent per annum to
50 the purchaser upon the amount paid therefor. Any sur-
51 plus of the bond proceeds over and above the cost of
52 the project shall be paid into the sinking fund herein-
53 after provided for. If the proceeds of the bonds, by error
54 of calculation or otherwise, shall be less than the cost
55 of the project, additional bonds may in like manner be
56 issued to provide the amount of such deficit, and, unless
57 otherwise provided in the ordinance or ordinances
58 authorizing the issuance of the bonds first issued, or
59 in the trust indenture hereinafter authorized, shall be
60 deemed to be of same issue, and shall be entitled to
61 payment without preference or priority of the bonds
62 first issued; and if any preference or priority of the bonds
63 first issued is provided for in the ordinance or ordinances
64 authorizing the issuance of the bonds first issued or in
65 said trust indenture, such preference or priority shall
66 not extend to an amount exceeding ten percent of the
67 original issue. Prior to the preparation of the definitive
68 bonds, interim certificates may, under like restrictions,
69 be issued with or without coupons exchangeable for de-
70 finitive bonds upon the issuance of the latter.

**ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDE-
WALKS AND SEWERS; SEWER CONNECTIONS
AND BOARD OF HEALTH.**

§8-18-14. Issuance of bonds.

1 Every municipality is hereby empowered and autho-
2 rized to issue its bonds for any improvements under the
3 provisions of this article in anticipation of special as-
4 sessments to be made upon the property abutting upon
5 the streets, alleys, public ways or easements, or sewer
6 rights-of-way or easements, so improved, and such bonds
7 may be in such an amount as will be sufficient to pay
8 the entire estimated cost and expense of such improve-
9 ments for which such special assessments are levied.
10 Such municipality is also authorized to sell such bonds,
11 but the price for which they are sold shall not be below

12 the par value of such bonds. Such bonds shall be pay-
13 able in not to exceed ten years from the date of the
14 issuance thereof, and shall bear interest at not to exceed
15 ten percent per annum, payable annually; and in the
16 issuance and sale of such bonds, the municipality shall
17 be governed by all the restrictions and limitations of
18 the constitution of this state, and by the restrictions and
19 limitations of the statutes of this state with respect to
20 the issuance and sale of other bonds, so far as they are
21 not in conflict with the provisions of this article; and
22 the assessments shall be collected as provided in sec-
23 tions ten and twelve of this article, and as paid and col-
24 lected shall be applied to the liquidation of such bonds
25 and the interest thereon; and if by reason of penalties
26 collected with delinquent assessments there be any
27 balance after the payment of such bonds and all accrued
28 interest and cost, such balance shall be turned into the
29 municipal treasury to the credit of the interest and
30 sinking fund of the municipality: *Provided*, That no such
31 municipality shall by sale or issuance of such bonds cause
32 the aggregate of its indebtedness of every kind whatso-
33 ever to exceed five percent of the value of taxable
34 property therein: *Provided, however*, That nothing here-
35 in contained shall be construed as authorizing any such
36 municipality to become indebted in any other manner
37 or for any other purpose, to an amount, including its
38 existing indebtedness, in the aggregate exceeding two
39 and one-half percent of the value of the taxable property
40 therein, as provided in section three, article one, chapter
41 thirteen of this code, except for the purpose of grading,
42 regrading, paving, repaving, surfacing, resurfacing, curb-
43 ing, recurbing, building or renewing sidewalks, or con-
44 structing sewers or otherwise improving or reimproving
45 the streets, alleys, public ways or easements, or sewer
46 rights-of-way or easements, of such municipality, as pro-
47 vided for in this article; nor shall such municipality make
48 such issuance and sale without at the same time pro-
49 viding for the collection of a direct annual tax sufficient
50 to pay annually the interest on such debt and the principal
51 thereof within and not exceeding ten years. All of the
52 assessments, interest and penalties collected from the

53 abutting property owners on account of the grading, re-
54 grading, paving, repaving, surfacing, resurfacing, curbing,
55 recurbing, building or renewing sidewalks, or constructing
56 sewers or otherwise improving or reimproving the streets,
57 alleys, public ways or easements, or sewer rights-of-way
58 or easements, of any such municipality, under the provi-
59 sions of this article, shall annually be applied to the annual
60 tax required to pay the interest on such debt and such
61 principal within and not exceeding ten years; and in the
62 event that the assessments, interest and penalties so col-
63 lected do not amount to a sum sufficient to pay annually
64 the interest on such debt and the principal thereof within
65 and not exceeding ten years, then the governing body of
66 such municipality shall collect so much of such levy as
67 will pay annually the interest on such debt and the
68 principal thereof within and not exceeding ten years.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

88-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rate for services.

88-19-6. Amount, negotiability and execution of bonds.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

1 Whenever a municipality shall, under the provisions of
2 this article, determine to acquire, by purchase or other-
3 wise, construct, establish, extend or equip a waterworks
4 system, or to construct any additions, betterments or im-
5 provements to any waterworks or electric power system,
6 it shall cause an estimate to be made of the cost thereof,
7 and shall, by ordinance, provide for the issuance of rev-
8 enue bonds under the provisions of this article, which
9 ordinance shall set forth a brief description of the con-
10 templated undertaking, the estimated cost thereof, the
11 amount, rate or rates of interest, the time and place of
12 payment, and other details in connection with the issu-
13 ance of the bonds. Such bonds shall be in such form and
14 shall be negotiated in such manner and upon such terms
15 as the governing body of such municipality may by ordi-
16 nance specify. All such bonds and the interest thereon,

17 and all properties and revenues and income derived from
18 such waterworks or electric power system, shall be ex-
19 empt from all taxation by this state, or any county,
20 municipality, political subdivision or agency thereof. Such
21 bonds shall bear interest at not more than ten percent
22 per annum, payable semiannually, and shall be payable
23 at such times, not exceeding forty years from their date,
24 and at such place or places, within or without the state, as
25 shall be prescribed in the ordinance providing for their
26 issuance. Such ordinance shall also declare that a statu-
27 tory mortgage lien shall exist upon the property so to be
28 acquired, constructed, established, extended or equipped,
29 fix minimum rates or charges for water to be collected
30 prior to the payment of all of said bonds and shall pledge
31 the revenues derived from the waterworks or electric
32 power system for the purpose of paying such bonds and
33 interest thereon, which pledge shall definitely fix and
34 determine the amount of revenues which shall be neces-
35 sary to be set apart and applied to the payment of the
36 principal of and interest upon the bonds and the pro-
37 portion of the balance of such revenues, which are to be
38 set aside as a proper and adequate depreciation account,
39 and the remainder shall be set aside for the reasonable
40 and proper maintenance and operation thereof. The rates
41 or charges to be charged for the services from such
42 waterworks or electric power system shall be sufficient
43 at all times to provide for the payment of interest upon
44 all bonds and to create a sinking fund to pay the principal
45 thereof as and when the same become due, and reasonable
46 reserves therefor, and to provide for the repair, mainte-
47 nance and operation of the waterworks or electric power
48 system, and to provide an adequate depreciation fund,
49 and to make any other payments which shall be required
50 or provided for in the ordinance authorizing the issuance
51 of said bonds.

§8-19-6. Amount, negotiability and execution of bonds.

1 Bonds herein provided for shall be issued in such
2 amounts as may be necessary to provide sufficient funds to
3 pay all costs of acquisition, construction, establishment,
4 extension or equipment, including engineering, legal and

5 other expenses, together with interest to a date six
6 months subsequent to the estimated date of completion.
7 Bonds issued under the provisions of this article are here-
8 by declared to be negotiable instruments, and the same
9 shall be executed by the proper legally constituted au-
10 thorities of the municipality and be sealed with the cor-
11 porate seal of the municipality, and in case any of the
12 officers whose signatures appear on the bonds or coupons
13 shall cease to be such officers before delivery of such
14 bonds, such signatures shall nevertheless be valid and
15 sufficient for all purposes the same as if they had re-
16 mained in office until such delivery. All signatures
17 on the bonds or coupons and the corporate seal may be
18 mechanically reproduced if authorized in the ordinance
19 authorizing the issuance of the bonds. Said bonds shall
20 not be negotiated at a price lower than a price which
21 when computed to maturity upon standard tables of
22 bond values will show a net return of more than ten per-
23 cent per annum to the purchaser upon the amount paid
24 therefor.

**ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE
SYSTEMS.**

**§8-20-5. Amount, negotiability and execution of bonds; refund
of outstanding obligations or securities by sale or
exchange of bonds.**

1 For the purpose of defraying the cost of acquisition, con-
2 struction, establishment or equipment of any such water-
3 works or sewerage system, or a combined waterworks
4 and sewerage system, and for the purpose of paying the
5 cost of constructing any extensions, additions, better-
6 ments or improvements to either the waterworks or sew-
7 erage system of said combined waterworks and sewerage
8 system, or both, any such municipality may issue revenue
9 bonds under the provisions of this article. All such bonds
10 may be authorized, issued and sold pursuant to ordinance
11 in installments at different times or an entire issue or
12 series may be sold at one time. Such bonds shall bear
13 interest at a rate not to exceed ten percent per annum,
14 payable semiannually, and shall mature within the period
15 of usefulness of the project involved, to be determined

16 by the governing body and in any event within a period
17 of not more than forty years. Such bonds may be in such
18 denomination or denominations, may be in such form,
19 either coupon or registered, may carry such registration
20 and conversion privileges, may be executed in such
21 manner, may be payable in such medium of payment, at
22 such place or places, may be subject to such terms of
23 redemption, with or without a premium, may be declared
24 to become due before the maturity date thereof, may
25 provide for the replacement of mutilated, destroyed,
26 stolen or lost bonds, may be authenticated in such manner
27 and upon compliance with such conditions, and may con-
28 tain such other terms and covenants, as may be provided
29 by ordinance of the governing body of the municipality.
30 Notwithstanding the form of tenor thereof, and in the
31 absence of an express recital on the face thereof that the
32 bond is nonnegotiable, all such bonds shall at all times be,
33 and shall be treated as, negotiable instruments for all
34 purposes. Said bonds and the interest thereon, together
35 with all properties and facilities of said municipality
36 owned or used in connection with said combined water-
37 works or sewerage system, and all the moneys, revenues
38 and other income of such municipality derived from
39 such combined waterworks and sewerage system shall
40 be exempt from all taxation by this state or any county,
41 municipality, political subdivision or agency thereof.
42 Such bonds may be sold in such manner as the governing
43 body shall determine and if issued to bear interest at the
44 rate of ten percent per annum shall be sold for not less
45 than par and accrued interest. If any such bonds shall be
46 issued to bear interest at a rate of less than ten percent
47 per annum, the minimum price at which they may be
48 sold shall be such that the interest cost to such munici-
49 pality of the proceeds of such bonds shall not exceed ten
50 percent per annum computed to maturity according to
51 the standard table of bond values: *Provided*, That if the
52 governing body of the municipality determines to sell
53 any revenue bonds of such combined waterworks and
54 sewerage system for refunding purposes, such bonds shall
55 be sold at not less than par and accrued interest and the
56 proceeds deposited at the place of payment of the bonds,

57 obligations or securities being refunded thereby. In case
58 any officer whose signature appears on such bonds or
59 coupons attached thereto shall cease to be such officer
60 before the delivery of the bonds to the purchaser, such
61 signature shall nevertheless be valid and sufficient for
62 all purposes, with the same effect as if he had remained
63 in office until the delivery of the bonds. All signatures on
64 the bonds or coupons and the corporate seal may be
65 mechanically reproduced if authorized in the ordinance
66 authorizing the issuance of the bonds. Such bonds shall
67 have all the qualities of negotiable instruments under the
68 law of this state.

69 Whenever a waterworks and sewerage system is includ-
70 ed in a combined waterworks and sewerage system under
71 the provisions of this article and there are unpaid and out-
72 standing revenue bonds or any other obligations or securi-
73 ties previously issued which are payable solely from the
74 revenues of such waterworks or such sewerage system or
75 any part thereof, such outstanding bonds, obligations or
76 securities may be refunded by the issuance and sale or
77 exchange therefor of revenue bonds to be issued under
78 the provisions of this article. Whenever any outstanding
79 bonds, obligations or securities previously issued which
80 are payable solely from the revenues of any waterworks
81 or sewerage system included in a combined waterworks
82 and sewerage system under the provisions of this article
83 are refunded and the refunding is to be accomplished by
84 exchange, such outstanding bonds, obligations or securi-
85 ties shall be surrendered and exchanged for revenue
86 bonds of such combined waterworks and sewerage system
87 of a total principal amount which shall not be more and
88 may be less than the principal amount of the bonds,
89 obligations or securities surrendered and exchanged plus
90 the interest to accrue thereon to the date of surrender and
91 exchange, and if the refunding is to be accomplished
92 through the sale of revenue bonds of such combined
93 waterworks and sewerage system the total principal
94 amount of such revenue bonds which may be sold for
95 refunding purposes shall not exceed the principal amount
96 of the bonds, obligations or securities being refunded plus

97 the interest to accrue thereon to the retirement date or
98 the next succeeding interest payment date, whichever
99 date may be earlier. Provision may be made that each
100 bond to be exchanged for refunding bonds shall be kept
101 intact and shall not be canceled or destroyed until the
102 refunding bonds, and interest thereon, have been finally
103 paid and discharged; but each such bond shall be stamped
104 with a legend to the effect that the same has been re-
105 funded pursuant to the provisions of this article.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

Article

1. **Bond Issues for Original Indebtedness.**

2A. **Revenue Bond Financing.**

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-14. Resolution authorizing issuance and fixing terms of bonds.

1 If three fifths of all the votes cast for and against the
2 proposition to incur debt and issue negotiable bonds shall
3 be in favor of the same, the governing body of the political
4 division shall, by resolution, authorize the issuance of
5 such bonds in an amount not exceeding the amount stated
6 in the proposition; fix the date thereof; set forth the
7 denominations in which they shall be issued, which
8 denominations shall be one hundred dollars or multiples
9 thereof; determine the rate of interest which the bonds
10 shall bear, which rate of interest shall be within the
11 maximum rate stated in the proposition submitted to
12 vote and payable semiannually, and shall in no case ex-
13 ceed ten percent per annum; prescribe the medium with
14 which the bonds shall be payable; require that the bonds
15 shall be made payable at the office of the state treasurer
16 and at such other place or places as the body issuing
17 the same may designate; provide for a sufficient levy to
18 pay the annual interest on the bonds and the principal
19 maturity; fix the times within the maximum period, as
20 contained in the proposition submitted to vote, when
21 the bonds shall become payable, which shall not exceed
22 thirty-four years from the date thereof; and prescribe a
23 form for executing the bonds authorized.

ARTICLE 2A. REVENUE BOND REFINANCING.**§13-2A-5. Form of bonds; interest rates; negotiability.**

1 The refunding bonds may be issued in one or more
2 series, may bear such date or dates, may mature at such
3 time or times not exceeding the period of usefulness
4 of the enterprise, as determined by the governing body
5 in its discretion, not in any event exceeding forty years
6 from their respective dates; may bear interest at such
7 rate or rates not exceeding the maximum rate of interest
8 borne by the notes, bonds or other obligations refinanced
9 thereby; may be in such denomination or denominations,
10 may be in such form either coupon or registered, may
11 carry such registration and conversion privileges, may be
12 executed in such manner, may be payable in such medium
13 of payment, at such place or places, may be subject to
14 such terms of redemption, with or without a premium,
15 may be declared or become due before the maturity date
16 thereof, may provide for the replacement of mutilated,
17 destroyed, stolen or lost bonds, may be authenticated in
18 such manner and upon compliance with such conditions;
19 and may contain such other terms and covenants, as
20 may be provided by resolution or resolutions of the
21 governing body of the public body: *Provided*, That if
22 the refinancing is for the sole purpose of discharging at
23 less than their face or par value all of the outstanding
24 notes, bonds or other obligations of a Class I or Class II
25 city, as defined in chapter eight of this code, and such
26 notes, bonds or other obligations are to be refinanced,
27 then such refunding bonds may bear interest at any rate
28 or rates, not exceeding ten percent per annum, which re-
29 sults in a total interest cost of not more than the total
30 amount of interest, including interest then in arrears,
31 that would have been payable from the date of such
32 refinancing to maturity of the notes, bonds or other
33 obligations so refinanced: *Provided, however*, That if the
34 governing body determines that one of the purposes of
35 issuing such refunding bonds is to effect the release,
36 termination or modification of liens, restrictions, con-
37 ditions or limitations imposed in connection with the
38 notes, bonds or other obligations refinanced thereby, then

39 such refunding bonds may be issued bearing interest at
40 such rate or rates as the governing body may determine,
41 but such rate or rates shall not exceed the maximum
42 stated rate of interest which the notes, bonds or other
43 obligations refinanced thereby could bear if they were
44 being issued as of the date of issuance of such refunding
45 bonds, and notwithstanding any other limitations con-
46 tained in this article, such refunding bonds may not be
47 sold or exchanged at a price which would result in a net
48 interest cost, herein defined to mean the total amount of
49 interest to accrue on the refunding bonds from the date
50 thereof to their respective maturities without regard to
51 any retained options of redemption plus the amount of any
52 discount below par or less the amount of any premium
53 above par at which the bonds may be sold or exchanged,
54 in excess of the maximum net interest cost which the
55 outstanding notes, bonds or other obligations to be re-
56 financed thereby could be sold or exchanged for if they
57 were being issued as of the date of issuance of such
58 refunding bonds.

59 Notwithstanding the form or tenor thereof, and in the
60 absence of an express recital on the face thereof that the
61 bond is nonnegotiable, all refunding bonds shall at all
62 times be, and shall be treated as, negotiable instruments
63 for all purposes.

CHAPTER 16. PUBLIC HEALTH.

Article

13. Sewage Works of Municipal Corporations and Sanitary Districts.

13A. Public Service Districts for Water and Sewerage Services.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

**§16-13-10. Interest on and redemption of bonds; form; state-
ment on face of bond; negotiability; exemption
from taxation; registration; execution; sale; dis-
position of surplus proceeds; additional and tem-
porary bonds.**

1 Such revenue bonds shall bear interest at not more
2 than ten percent per annum, payable semiannually, and
3 shall mature at such time or times as may be determined

4 by ordinance. Such bonds may be made redeemable be-
5 fore maturity at the option of the municipality, to be
6 exercised by said board, at not more than the par value
7 thereof and a premium of five percent, under such terms
8 and conditions as may be fixed by the ordinance authoriz-
9 ing the issuance of the bonds. The principal and interest
10 of the bonds may be made payable in any lawful medium.
11 Said ordinance shall determine the form of the bonds,
12 including the interest coupons to be attached thereto,
13 and shall fix the denomination or denominations of such
14 bonds and the place or places of payment of the principal
15 and interest thereof, which may be at any bank or
16 trust company within or without the state. The bonds
17 shall contain a statement on their face that the
18 municipality shall not be obligated to pay the same or
19 the interest thereon except from the special fund pro-
20 vided from the net revenues of the works. All such bonds
21 shall be, and shall have and are hereby declared to have
22 all the qualities and incidents of, negotiable instru-
23 ments under the Uniform Commercial Code of the state.
24 Said bonds shall be exempt from all taxation, state,
25 county and municipal. Provisions may be made for the
26 registration of any of the bonds in the name of the
27 owner as to principal alone. Such bonds shall be executed
28 by the proper legally constituted authorities of the
29 municipality and be sealed with the corporate seal of
30 the municipality, and in case any of the officers whose
31 signatures appear on the bonds or coupons shall cease
32 to be such officers, before delivery of such bonds, such
33 signatures shall nevertheless be valid and sufficient for
34 all purposes the same as if they had remained in office
35 until such delivery. Such bonds shall be sold at a price
36 not lower than a price, which when computed upon
37 standard tables of bond values, will show a net return
38 of not more than eleven per centum per annum to the
39 purchaser upon the amount paid therefor and the pro-
40 ceeds derived therefrom shall be used exclusively for
41 the purposes for which said bonds are issued and same
42 may be sold at one time or in parcels as funds are needed.
43 Any surplus of bond proceeds over and above the cost
44 of the works shall be paid into the sinking fund here-

45 inafter provided. If the proceeds of the bonds, by error
46 of calculation or otherwise, shall be less than the cost
47 of the works, additional bonds may in like manner be
48 issued to provide the amount of such deficit and, unless
49 otherwise provided in said ordinance authorizing the
50 issuance of the bonds first issued or in the trust indenture
51 hereinafter authorized, shall be deemed to be of the
52 same issue and shall be entitled to payment without
53 preference or priority of the bonds first issued. Prior
54 to the preparation of the definitive bonds, temporary
55 bonds may under like restrictions be issued with or with-
56 out coupons, exchangeable for definitive bonds upon the
57 issuance of the latter.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND
SEWERAGE SERVICES.**

§16-13A-13. Revenue bonds.

1 For constructing or acquiring any public service prop-
2 erties for the authorized purposes of the district, or
3 necessary or incidental thereto, and for constructing
4 improvements and extensions thereto, and also for reim-
5 bursing or paying the costs and expenses of creating the
6 district, the board of any such district is hereby autho-
7 rized to borrow money from time to time and in evidence
8 thereof issue the bonds of such district, payable solely
9 from the revenues derived from the operation of the
10 public service properties under control of the district.
11 Such bonds may be issued in one or more series, may
12 bear such date or dates, may mature at such time or
13 times not exceeding forty years from their respective
14 dates, may bear interest at such rate or rates not exceed-
15 ing ten percent per annum payable semiannually, may be
16 in such form, may carry such registration privileges, may
17 be executed in such manner, may be payable at such
18 place or places, may be subject to such terms of redemp-
19 tion with or without premium, may be declared or become
20 due before maturity date thereof, may be authenticated
21 in any manner, and upon compliance with such condi-
22 tions, and may contain such terms and covenants as may
23 be provided by resolution or resolutions of the board.
24 Notwithstanding the form or tenor thereof, and in the

25 absence of any express recital on the face thereof, that
26 the bond is nonnegotiable, all such bonds shall be, and
27 shall be treated as, negotiable instruments for all pur-
28 poses. Bonds bearing the signatures of officers in office on
29 the date of the signing thereof shall be valid and binding
30 for all purposes notwithstanding that before the delivery
31 thereof any or all of the persons whose signatures appear
32 thereon shall have ceased to be such officers. Notwith-
33 standing the requirements or provisions of any other law,
34 any such bonds may be negotiated or sold in such manner
35 and at such time or times as is found by the board to be
36 most advantageous, and all such bonds may be sold at such
37 price that the interest cost of the proceeds therefrom does
38 not exceed ten percent per annum, based on the average
39 maturity of such bonds and computed according to stan-
40 dard tables of bond values. Any resolution or resolutions
41 providing for the issuance of such bonds may con-
42 tain such covenants and restrictions upon the issuance of
43 additional bonds thereafter as may be deemed necessary
44 or advisable for the assurance of the payment of the
45 bonds thereby authorized.

CHAPTER 18. EDUCATION.

ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-6. Disposition and use of student union fees; issuance of revenue bonds.

1 Whenever the term "student union building" is used in
2 this section the same shall mean a student union building
3 or a combination student union building and dining hall
4 building; and wherever the term "building fund" is used
5 in this section the same shall mean the respective special
6 student union building funds created as provided in sec-
7 tion one of this article for each state educational institu-
8 tion which has imposed student union fees pursuant to
9 section one of this article, to be expended by the West
10 Virginia board of regents for the benefit of the state edu-
11 cational institutions under its control.

12 The West Virginia board of regents may make expendi-
13 tures from such building funds at the various state educa-

14 tional institutions under its control to finance in whole or
15 in part, together with any federal, state or other grants or
16 contributions, any one or more of the following purposes:

17 (1) The construction and acquisition of new student
18 union buildings. (2) The acquisition, renovation and im-
19 provement of existing buildings to be used as student
20 union buildings. (3) The construction of additions, exten-
21 sions and improvements to existing student union build-
22 ings. (4) The acquisition of furnishings and equipment for
23 any existing student union buildings or student union
24 buildings to be constructed or acquired, or the construc-
25 tion of any roads, utilities or other properties, real or
26 personal, or for any other purposes necessary, appur-
27 tenant or incidental to the construction, acquisition,
28 financing and placing in operation of such student union
29 buildings. (5) The payment of the cost of the operation
30 and maintenance of such student union buildings, subject
31 however to any covenants or agreements made with the
32 holders of revenue bonds heretofore or hereafter issued
33 pursuant to this section or pursuant to section one of this
34 article.

35 The West Virginia board of regents, at its discretion,
36 may use the moneys in such building funds to finance the
37 costs of the above purposes on a cash basis, or may from
38 time to time issue revenue bonds of the state as provided
39 in this section to finance all or part of such purposes and
40 pledge all or any part of the moneys in such building
41 funds for the payment of the principal of and interest on
42 such revenue bonds, and for reserves therefor. Any pledge
43 of such building funds for such revenue bonds shall be a
44 prior and superior charge on such special funds over the
45 use of any of the moneys in such funds to pay for the cost
46 of any of such purposes on a cash basis, or for the pay-
47 ment of the cost of operation and maintenance, or any
48 part thereof, of such student union buildings, under such
49 terms and conditions as shall be provided in the proceed-
50 ings which authorized the issuance of such revenue bonds.

51 Such revenue bonds may be authorized and issued from
52 time to time by the West Virginia board of regents to

53 finance in whole or in part the purposes at any state edu-
54 cational institution under its control provided for in this
55 section in an aggregate principal amount not exceeding
56 the amount which the board shall determine can be paid
57 as to both principal and interest and reasonable margins
58 for a reserve therefor from the moneys in such building
59 funds.

60 The issuance of such revenue bonds shall be authorized
61 by a resolution adopted by the West Virginia board of
62 regents, and such revenue bonds shall bear such date or
63 dates, mature at such time or times not exceeding forty
64 years from their respective dates; bear interest at such
65 rate or rates not exceeding ten per centum per annum; be
66 in such form either coupon or registered, with such ex-
67 changeability and interchangeability privileges; be pay-
68 able in such medium of payment and at such place or
69 places, within or without the state; be subject to such
70 terms of prior redemption at such prices not exceeding
71 one hundred five per centum of the principal amount
72 thereof; and shall have such other terms and provisions
73 as the board shall determine. Such revenue bonds shall be
74 signed by the governor and by the president of the West
75 Virginia board of regents, under the great seal of the
76 state, attested by the secretary of state, and the coupons
77 attached thereto shall bear the facsimile signature of
78 the president of the West Virginia board of regents. Such
79 revenue bonds shall be sold in such manner as the board
80 may determine to be for the best interests of the state.

81 The West Virginia board of regents may enter into trust
82 agreements with banks or trust companies, within or with-
83 out the state, and in such trust agreements or the resolu-
84 tions authorizing the issuance of such bonds may enter in-
85 to valid and legally binding covenants with the holders of
86 such revenue bonds as to the custody, safeguarding and
87 disposition of the proceeds of such revenue bonds, the
88 moneys in such building funds, sinking funds, reserve
89 funds, or any other moneys or funds; as to the rank and
90 priority, if any, of different issues of revenue bonds issued
91 by the board for the same educational institution under
92 the provisions of this section; as to the maintenance or

93 revision of the amounts of such student union fees, and
94 the terms and conditions, if any, under which any of such
95 student union fees may be reduced; and as to any other
96 matters or provisions which are deemed necessary and
97 advisable by the board in the best interests of the state
98 and to enhance the marketability of such revenue bonds.

99 Any revenues or income derived from the operation of
100 such student union buildings may, in the discretion of the
101 board, be used to pay the cost of the operation and main-
102 tenance of such student union buildings, or for the debt
103 service on any bonds issued pursuant to this section or
104 pursuant to any other law.

105 After the issuance of any of such revenue bonds, the
106 student union fees at the state educational institution for
107 which such revenue bonds were issued shall not be re-
108 duced as long as any of such revenue bonds are outstand-
109 ing and unpaid except under such terms, provisions and
110 conditions as shall be contained in the resolution, trust
111 agreement or other proceedings under which such rev-
112 enue bonds were issued.

113 Such revenue bonds shall be and constitute negotiable
114 instruments under the Uniform Commercial Code of the
115 state, shall, together with the interest thereon, be exempt
116 from all taxation by the state of West Virginia, or by any
117 county, school district, municipality or political subdivi-
118 sion thereof; and such revenue bonds shall not be deemed
119 to be obligations or debts of the state, and the credit or
120 taxing power of the state shall not be pledged therefor,
121 but such revenue bonds shall be payable only from the
122 student union fees pledged therefor as provided in this
123 section.

124 The provisions of this section shall constitute an addi-
125 tional, alternative and complete authority for the exer-
126 cise of the powers and the issuance of the bonds provided
127 for in this section, but shall not prevent the West Vir-
128 ginia board of regents from exercising similar or related
129 powers or issuing bonds therefor under any other law or
130 laws, but the board, in exercising the powers and issuing
131 the bonds provided for in this section, shall only be re-

132 quired to comply with the provisions of this section and
133 shall not be required to comply with or be subject to the
134 provisions of any other law or laws.

CHAPTER 34

(H. B. 779—By Mr. Hendricks and Mr. Tucker)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing to not more than five dollars per day the allotment for food that a county must provide for prisoners.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-13. Allowance for expenses of sheriff.

1 The county commission of every county having a popula-
2 tion of thirty thousand or less as determined by the latest
3 official census available and which, as provided in section
4 two-a, article eight of this chapter, has directed the sheriff
5 as jailer to feed prisoners shall, in addition to his
6 compensation, allow to the sheriff for keeping and feed-
7 ing each prisoner, other than federal prisoners or prisoners
8 held under civil process as provided by law, not more than
9 five dollars per day for each prisoner.

10 The limitation per day shall not include cost of personal
11 service, bed or bedding, soaps, and disinfectants and items
12 of like kind, the cost of which shall be paid out of the allowance

13 fixed by the county commission under the provisions of present
14 law.

15 All supplies of whatever kind for keeping and feeding
16 prisoners shall be purchased upon the requisition of the sheriff
17 under rules and regulations prescribed by the county com-
18 mission. At the end of each month the sheriff shall file with
19 the county commission a detailed statement showing the
20 name of each prisoner, date of commitment, date of discharge,
21 the number of days in jail, and an itemized statement showing
22 each purchase and the cost for keeping and feeding pri-
23 soners.

24 The county commission of every county shall allow the
25 actual and necessary expenses incurred by the sheriff in the
26 discharge of his duties, including, but not limited to: Those
27 incurred in arresting, pursuing or transporting persons accused
28 or convicted of crimes and offenses; in the cost of law-enforce-
29 ment and safety equipment; in conveying or transporting a
30 prisoner from and to jail to participate in court proceedings;
31 and in conveying or transferring any person to or from any
32 state institution where he may be committed from his county,
33 where the sheriff is authorized to convey or transfer the
34 person. The county commission shall allow the actual and
35 necessary expenses incurred in serving summons, notices or
36 other official papers in connection with the sheriff's office.

37 Every sheriff shall file monthly, under oath, an accurate
38 account of all the actual and necessary expenses incurred by
39 him, his deputies, assistants and employees in the performance
40 and discharge of their official duties supported by verified
41 accounts before reimbursement thereof shall be allowed by
42 the county commission. Reimbursement, properly allowed,
43 shall be made from the general county fund.

CHAPTER 35

(Com. Sub. for S. B. 157—By Mr. Rollins)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty,
chapter nineteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to permitting the county commissions to set the costs and fees for seized and impounded dogs.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20. DOGS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

1 All dogs seized and impounded as provided in this
2 article, except dogs taken into custody under section two
3 of this article, shall be kept housed and fed in the county
4 dog pound for five days after notice of seizure and im-
5 pounding shall have been given or posted as required
6 by this article, at the expiration of which time all dogs
7 which have not previously been redeemed by their
8 owners as herein provided, shall be sold or humanely
9 destroyed. No dog sold as herein provided shall be dis-
10 charged from the pound until such dog shall have been
11 registered and provided with a valid registration tag.

12 The owner, keeper or harbinger of any dog seized and
13 impounded under the provisions of this article may, at
14 any time prior to the expiration of five days from the
15 time that notice of the seizure and impounding of the
16 dog shall have been given or posted as required by this
17 article, redeem the same by paying to the dog warden or
18 his authorized agent or deputy all of the costs assessed
19 against such dog, and by providing a valid certificate of
20 registration and registration tag for such dog.

21 Reasonable costs and fees, in such amount as may be
22 determined from time to time by the county commission,
23 shall be assessed against every dog seized and impounded
24 under the provisions of this article, except dogs taken
25 into custody under section two of this article. Such cost
26 shall be a valid claim in favor of the county against the
27 owner, keeper or harbinger of any dog seized and im-
28 pounded under the provisions of this article and not
29 redeemed or sold as herein provided, and such costs shall

30 be recovered by the sheriff in a civil action against such
31 owner, keeper or harborer.

32 A record of all dogs impounded, the disposition of such
33 dogs, and a statement of costs assessed against each dog
34 shall be kept by the dog warden and a transcript thereof
35 shall be furnished to the sheriff quarterly.

CHAPTER 36

(H. B. 1624—By Mr. Albright)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-n, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court for the fourteenth judicial circuit; changing the beginning days of circuit court term in the counties of Clay and Webster.

Be it enacted by the Legislature of West Virginia:

That section one-n, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1n. Fourteenth circuit.

1 For the county of Braxton on the first Monday in February,
2 June and October.

3 For the county of Clay on the third Monday in March, the
4 second Monday in July and the first Monday in November.

5 For the county of Gilmer on the first Monday in March,
6 July and November.

7 For the county of Webster on the second Monday in Janu-
8 ary, and the first Monday in May and September.

CHAPTER 37

(Com. Sub. for H. B. 1045—By Mr. Teets)

[Passed February 12, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-q and one-r, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the dates of the terms of court for the seventeenth and eighteenth judicial circuits.

Be it enacted by the Legislature of West Virginia:

That sections one-q and one-r, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1q. Seventeenth circuit.

§51-2-1r. Eighteenth circuit.

§51-2-1q. Seventeenth circuit.

- 1 For the county of Monongalia, on Thursday after the first
- 2 Monday in January, May and September.

§51-2-1r. Eighteenth circuit.

- 1 For the county of Preston, on the first Tuesday in March
- 2 and June and the third Tuesday in October.

CHAPTER 38

(S. B. 77—By Mr. Brotherton, Mr. President)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two of said chapter, all relating to increasing the salaries of justices of the supreme court of appeals and circuit judges.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article two of said chapter be amended and reenacted, all to read as follows:

Article

1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

- 1 The salary of each of the justices of the supreme court
- 2 of appeals shall be forty thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

- 1 The salaries of the judges of the various circuit courts
- 2 shall be paid solely out of the state treasury. No county,
- 3 county commission, board of commissioners or other
- 4 political subdivision shall supplement or add to such
- 5 salaries.
- 6 The annual salary of all circuit judges shall be thirty-
- 7 eight thousand dollars per year.

CHAPTER 39

(H. B. 926—By Mr. Worden and Mr. Swann)

[Passed January 31, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to continuing and reestablishing the division of archives and history.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section seven-a, to read as follows:

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-7a. Reestablishment of division of archives and history.

1 After having conducted a performance and fiscal audit
 2 through its joint committee on government operations, pursuant
 3 to section nine, article ten, chapter four of this code, the
 4 Legislature hereby finds and declares that the division of
 5 archives and history should be continued and reestablished.
 6 Accordingly, notwithstanding the provisions of section four,
 7 article ten, chapter four of this code, the division of archives
 8 and history shall continue to exist until the first day of July,
 9 one thousand nine hundred eighty-six.

CHAPTER 40

(S. B. 569—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to depositories for demand deposits; apportionment of deposits; board authorized to select depositories through competitive bidding; maintenance of deposits by treasurer; depositories for interest earning deposits; qualifications.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.

§12-1-3. Depositories for interest earning deposits; qualifications.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.

1 The state board of investments shall designate the state
2 and national banks in this state which shall serve as de-
3 positories for all state funds placed in demand deposits.
4 Any such state or national bank shall, upon request to
5 such board, be designated as a state depository for such
6 deposits, if such bank meets the requirements set forth in
7 this chapter: *Provided*, That notwithstanding any provi-
8 sion of this article to the contrary, no state funds may be
9 deposited in any bank which has been in existence over a
10 period of five years which does not have a loan to deposit
11 ratio of fifty percent or more and which does not have
12 farm, single or multifamily residential unit loans in an
13 amount greater than twenty-five percent of the amount
14 of loans representing a loan-to-deposit ratio of fifty per-
15 cent. For the purpose of making the foregoing calculation,
16 the balances due the bank on the following loans shall
17 be given effect: (1) Qualifying residential loans held by
18 the bank; (2) qualifying loans made in participation with
19 other financial institutions; (3) qualifying loans made
20 in participation with agencies of the state, federal or
21 local governments; and (4) qualifying loans originated
22 and serviced by the bank but owned by an out-of-state
23 investor. The computation of the criteria for eligibility
24 specified above shall be based on the average daily
25 balances of deposits, the average daily balances of total
26 loans, and qualifying residential loans for the period
27 being reported.

28 Demand deposit accounts shall consist of receipt, dis-
29 bursement and investment accounts. Receipt accounts
30 shall be those accounts in which are deposited moneys
31 belonging to or due the state of West Virginia or any
32 official, department, board, commission or agency thereof.

33 Disbursement accounts shall be those accounts from
34 which are paid moneys due from the state of West Vir-
35 ginia or any official, department, board, commission,
36 political subdivision or agency thereof to any political

37 subdivision, person, firm or corporation except moneys
38 paid from investment accounts.

39 Investment accounts shall be those accounts established
40 by the treasurer or board of investments for the buying
41 and selling of securities for investment for the state of
42 West Virginia or any official, department, board, commis-
43 sion or agency thereof or to meet obligations to paying
44 agents or for paying charges incurred for the custody,
45 safekeeping and management of such securities pursuant
46 to the provisions of section five, article five of this chapter,
47 or for paying the charges of any bank or trust company
48 acting as paying agent or copaying agent for a bond
49 issue of the state pursuant to the provisions of section
50 seven-a, article one, chapter fifty-seven of this code.

51 The board of investments shall promulgate rules and
52 regulations, in accordance with the provisions of chapter
53 twenty-nine-a of the code of West Virginia, as amended,
54 concerning depositories for receipt accounts and invest-
55 ment accounts prescribing the selection criteria, proce-
56 dures, compensation and such other contractual terms
57 as it considers to be in the best interests of the state giv-
58 ing due consideration to: (1) The activity of the various
59 accounts maintained therein; (2) the reasonable value of
60 the banking services rendered or to be rendered the state
61 by such depositories; and (3) the value and importance
62 of such deposits to the economy of the communities and
63 the various areas of the state affected thereby.

64 The board of investments shall select depositories for
65 disbursement accounts through competitive bidding by
66 eligible banks in this state: *Provided*, That funds in
67 disbursement accounts shall be proportionately dis-
68 tributed among the following categories of such deposi-
69 tories, based upon the total assets of such depository: (a)
70 Depositories whose total assets are not greater than
71 twenty-five million dollars; (b) depositories whose total
72 assets are greater than twenty-five million dollars but not
73 greater than fifty million dollars; or (c) depositories
74 whose total assets are greater than fifty million dollars.
75 The board shall promulgate rules and regulations, in
76 accordance with the provisions of chapter twenty-nine-a

77 of the code of West Virginia, as amended, prescribing the
78 procedures and criteria for such bidding and selection. It
79 shall, in its invitations for bids, specify the approximate
80 amounts of deposits, the duration of contracts to be
81 awarded and such other contractual terms as it considers
82 to be in the best interests of the state, consistent with
83 obtaining the most efficient service at the lowest cost:
84 *Provided, however,* That the depositories for such dis-
85 bursement accounts shall be determined by the board
86 through competitive bidding separately for each category
87 of depositories created in this section.

88 The amount of money needed for current operation
89 purposes of the state government, as determined by the
90 state treasurer, shall be maintained at all times in the
91 state treasury, in cash or in disbursement accounts with
92 banks designated as depositories in accordance with the
93 provisions of this section. No state officer or employee
94 shall make or cause to be made any deposits of state funds
95 in banks not so designated.

**§12-1-3. Depositories for interest earning deposits; qualifica-
tions.**

1 Any state or national bank or any state or federal sav-
2 ings and loan association in this state shall, upon request
3 made to the board of investments, be designated as an eli-
4 gible depository for interest earning deposits of state
5 funds if such bank or state or federal savings and loan as-
6 sociation meets the requirements set forth in this chapter.
7 For purposes of this article, the term "interest earning de-
8 posits" includes certificates of deposit. The board of in-
9 vestments, acting through the treasurer, shall make and
10 apportion such interest earning deposits and shall pre-
11 scribe the interest rates, terms and conditions of such
12 deposits, all in accordance with the provisions of article
13 six of this chapter: *Provided,* That state or federal savings
14 and loan associations insured by an agency of the federal
15 government shall be eligible for such deposits not in ex-
16 cess of one hundred thousand dollars: *Provided, however,*
17 That notwithstanding any provision of this article to the
18 contrary, no such interest earning deposits may be de-

19 posited in any depository which has been in existence over
20 a period of five years which does not have a loan to de-
21 posit ratio of fifty percent or more and which does not
22 have farm, single or multifamily residential unit loans in
23 an amount greater than twenty-five percent of the amount
24 of loans representing a loan-to-deposit ratio of fifty per-
25 cent. For the purpose of making the foregoing calcula-
26 tion, the balances due the depository on the following
27 loans shall be given effect: (1) Qualifying residential
28 loans held by the depository; (2) qualifying loans made
29 in participation with other financial institutions; (3)
30 qualifying loans made in participation with agencies of
31 the state, federal or local governments; and (4) qualify-
32 ing loans originated and serviced by the depository but
33 owned by an out-of-state investor. The computation of
34 the criteria for eligibility specified above shall be based
35 on the average daily balances of deposits, the average
36 daily balances of total loans, and qualifying residential
37 loans for the period being reported.

CHAPTER 41

(Com. Sub. for S. B. 62—By Mr. Gilligan)

[Passed February 27, 1980; in effect April 1, 1980. Approved by the Governor.]

AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred three-a, relating to the prohibition of illegal drug paraphernalia businesses; providing that any person who conducts, finances, manages, supervises, directs or owns all or part of such business is guilty of a misdemeanor, and setting forth the penalty therefor; describing the elements of such offense; defining the term "drug device"; providing for certain places to be deemed common and public nuisances; providing that a person who maintains, aids and abets, or knowingly associates with others in maintaining such nuisance is guilty of a

misdemeanor, and setting forth the penalty therefor; providing for abatement of nuisances; suits to abate nuisances; requiring bond in certain cases; providing for injunction; providing for the issuance of search warrants; forfeiture of property.

Be it enacted by the Legislature of West Virginia:

That article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, by adding thereto a new section, designated section four hundred three-a, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.

1 (a) Any person who conducts, finances, manages,
2 supervises, directs or owns all or part of an illegal drug
3 paraphernalia business is guilty of a misdemeanor, and,
4 upon conviction thereof, shall be fined not more than five
5 thousand dollars, or confined in jail not less than six
6 months nor more than one year, or both.

7 (b) A person violates subsection (a) of this section
8 when:

9 (1) The person conducts, finances, manages, supervises,
10 directs, or owns all or part of a business which for profit,
11 in the regular course of business or as a continuing
12 course of conduct, manufactures, sells, stores, possesses,
13 gives away or furnishes objects designed to be primarily
14 useful as drug devices.

15 (2) The person knows or has reason to know that the
16 design of such objects renders them primarily useful as
17 drug devices.

18 (c) As used in this section, "drug device" means an
19 object usable for smoking marihuana, for smoking con-
20 trolled substances defined as tetrahydrocannabinols, or

21 for ingesting or inhaling cocaine, and includes, but is not
22 limited to:

23 (i) Metal, wooden, acrylic, glass, stone, plastic or
24 ceramic pipes with or without screens, permanent screens,
25 hashish heads, or punctured metal bowls;

26 (ii) Water pipes;

27 (iii) Carburetion tubes and devices;

28 (iv) Smoking and carburetion masks;

29 (v) Roach clips; meaning objects used to hold burning
30 material, such as a marijuana cigarette, that has become
31 too small or too short to be held in the hand;

32 (vi) Chamber pipes;

33 (vii) Carburetor pipes;

34 (viii) Electric pipes;

35 (ix) Air-driven pipes;

36 (x) Chillums;

37 (xi) Bongs;

38 (xii) Ice pipes or chillers; and

39 (xiii) Miniature cocaine spoons, and cocaine vials.

40 In any prosecution under this section, the question
41 whether an object is a drug device shall be a question
42 of fact.

43 (d) A place where drug devices are manufactured,
44 sold, stored, possessed, given away or furnished in viola-
45 tion of this section shall be deemed a common or public
46 nuisance. Conveyances or vehicles of any kind shall be
47 deemed places within the meaning of this section and
48 may be proceeded against under the provisions of sub-
49 section (e) of this section. A person who shall maintain,
50 or shall aid or abet or knowingly be associated with
51 others in maintaining such common or public nuisance
52 shall be guilty of a misdemeanor, and, upon conviction
53 thereof, shall be punished by a fine of not more than one
54 thousand dollars, or by confinement in jail not more

55 than six months for each offense, and judgment shall be
56 given that such nuisance be abated or closed as a place
57 for the manufacture, sale, storage, possession, giving away
58 or furnishing of drug devices.

59 (e) The prosecuting attorney or a citizen of the county
60 or municipality where a nuisance as defined in subsec-
61 tion (d) is located, may maintain a suit in the name of
62 the state to abate and perpetually enjoin the same. Cir-
63 cuit courts shall have jurisdiction thereof. The injunction
64 may be granted at the commencement of the suit and no
65 bond shall be required if such action for injunction be
66 brought by the prosecuting attorney. If such suit for
67 injunction be brought or maintained by a citizen of the
68 county or municipality where such nuisance is alleged
69 to be located, then the court may require a bond as in
70 other cases of injunction. On the finding that the ma-
71 terial allegations of the complaint are true, the court or
72 judge thereof in vacation shall order the injunction for
73 such period of time as it or he may think proper, with
74 the right to dissolve the injunction upon the application
75 of the owner of the place, if a proper case is shown for
76 such dissolution.

77 The continuance of the injunction as provided in this
78 section may be ordered, although the place complained
79 of may not at the time of hearing be unlawfully used.

80 (f) If there be complaint on oath or affirmation support-
81 ed by affidavit or affidavits setting forth the facts for such
82 belief that drug devices are being manufactured, sold,
83 kept, stored or in any manner held, used or concealed in a
84 particular house or other place with intent to engage in
85 illegal drug paraphernalia business in violation of law,
86 a magistrate or a circuit court, or the judge thereof in
87 vacation to whom such complaint is made, if satisfied that
88 there is probable cause for such belief, shall issue a
89 warrant to search such house or other place for such
90 devices. Such warrants, except as herein otherwise pro-
91 vided, shall be issued, directed and executed in accord-
92 ance with the laws of West Virginia pertaining to search
93 warrants. Warrants issued under this section for the
94 search of any automobile, boat, conveyance or vehicle,

95 or for the search of any trunk, grip or other article of
96 baggage, for such devices, may be executed in any part
97 of the state where the same are overtaken, and shall be
98 made returnable before any magistrate or circuit court,
99 or the judge thereof in vacation, within whose jurisdic-
100 tion such automobile, boat, conveyance, vehicle, trunk,
101 grip or other article of baggage, or any of them, were
102 transported or attempted to be transported.

103 An officer charged with the execution of a warrant
104 issued under this section, may, whenever it is necessary,
105 break open and enter a house, or other place herein
106 described.

107 (g) Any property, including money, used in violation
108 of the provisions of this section may be seized and for-
109 feited to the state.

CHAPTER 42

(Com. Sub. for H. B. 1461—By Mr. Prunty)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to employees of West Virginia board of regents and institutions of higher education receiving their salaries in twelve equal monthly installments.

Be it enacted by the Legislature of West Virginia:

That article three, 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 twelve-a, to read as follows:

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.**§12-3-12a. Payment of salaries of employees of West Virginia board of regents and institutions of higher education in twelve equal monthly installments.**

1 Notwithstanding the provisions of section twelve of this
2 article, in the event that an employee of the West Virginia
3 board of regents or of any of the institutions which it governs
4 elects to receive his salary in twelve equal monthly installments,
5 warrants may be drawn for the last two such installments in
6 the months of July and August following the fiscal year
7 during which such salary was earned: *Provided*, That such
8 warrants have been encumbered by said board of regents and
9 the budget office prior to the thirtieth day of June of said
10 fiscal year.

CHAPTER 43

(Fin. Com. Sub. for Ed. Com. Sub. for S. B. 167—
By Mr. Tonkovich and Mr. Galperin)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one, chapter eighteen-a of said code; to amend and reenact sections one, two-a, three, eight and eight-a, article four of said chapter; and to further amend said article four by adding thereto a new section, designated section one-a, all relating to certain salaries, job classifications, and other employment matters of employees of county boards of education; placing school nurses in teachers pay scale; pay raise for teachers; increasing principals' pay increments; pay raise for auxiliary and service personnel; additional pay for custodians who work a split shift; creating a job classification of sanitation plant operator; redefinition of job classification of Secre-

tary II; prohibiting reduction of rate of pay, compensation, or benefits of auxiliary and service personnel under certain conditions; and requiring report to Legislature of auxiliary and service personnel working split shifts and of ratio of cooks to meals served.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 1. DEFINITIONS, LIMITATIONS OF CHAPTER.

§18-1-1. Definitions.

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context
3 clearly indicates a different meaning, be construed as
4 follows:

5 (a) "School" shall mean the pupils and teacher or
6 teachers assembled in one or more buildings, organized as
7 a unit;

8 (b) "District" shall mean county school district;

9 (c) "State board" shall mean the West Virginia board
10 of education;

11 (d) "Board" shall mean the county board of educa-
12 tion;

13 (e) "State superintendent" shall mean the state super-
14 intendent of free schools;

15 (f) "Superintendent" shall mean the county superin-
16 tendent of schools;

17 (g) "Teacher" shall mean teacher, supervisor, prin-
18 cipal, superintendent, public school librarian; registered
19 professional nurse, licensed by the West Virginia board
20 of examiners for registered professional nurses and em-
21 ployed by a county board of education, who has a bac-
22 calaureate degree; or any other person regularly em-
23 ployed for instructional purposes in a public school in
24 this state;

25 (h) "Service personnel" shall mean all nonteaching
26 school employees not included in the above definition of
27 "teacher";

28 (i) "Regular full-time employee" shall mean any per-
29 son employed by a county board of education who has a
30 regular position or job throughout his employment term,
31 without regard to hours or method of pay.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

1. General Provisions.
4. Salaries, Wages, and Other Benefits.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one of
2 chapter eighteen shall be applicable to this chapter. In
3 addition, the following words used in this chapter and in
4 any proceedings pursuant thereto shall, unless the context
5 clearly indicates a different meaning, be construed as
6 follows:

7 (a) "School personnel" shall mean all personnel em-
8 ployed by a county board of education whether employed
9 on a regular full-time basis, an hourly basis or otherwise.
10 School personnel shall be comprised of three categories:
11 Professional personnel, auxiliary personnel and service
12 personnel.

13 (b) "Professional personnel" shall mean persons who

14 meet the certification and/or licensing requirements of
15 the state, and shall include the professional educator and
16 other professional employees.

17 (c) "Professional educator" shall be synonymous with
18 and shall have the same meaning as "teacher" as defined
19 in section one, article one, chapter eighteen of this code.
20 Professional educators shall be classified as:

21 (1) "Classroom teacher": The professional educator
22 who has direct instructional or counseling relationship
23 with pupils, spending the majority of his time in this
24 capacity.

25 (2) "Principal": The professional educator who as
26 agent of the board has responsibility for the supervision,
27 management and control of a school or schools within the
28 guidelines established by said board. The major area of
29 such responsibility shall be the general supervision of all
30 the school and all school activities involving pupils,
31 teachers and other school personnel.

32 (3) "Supervisor": The professional educator who,
33 whether by this or other appropriate title, is responsible
34 for working primarily in the field with professional and/
35 or other personnel in instructional and other school im-
36 provement.

37 (4) "Central office administrator": The superintendent,
38 associate superintendent, assistant superintendent and
39 other professional educators, whether by these or other
40 appropriate titles, who are charged with the administer-
41 ing and supervising of the whole or some assigned part of
42 the total program of the county-wide school system.

43 (d) "Other professional employee" shall mean that per-
44 son from another profession who is properly licensed and
45 is employed to serve the public schools and shall include
46 a registered professional nurse, licensed by the West
47 Virginia board of examiners for registered professional
48 nurses and employed by a county board of education, who
49 has completed either a two-year (sixty-four semester
50 hours) or a three-year (ninety-six semester hours) nurs-
51 ing program.

52 (e) "Auxiliary personnel" shall mean those persons se-
53 lected and trained for teacher-aide classifications such as
54 monitor aide, clerical aide, classroom aide, general aide.

55 (f) "Service personnel" shall mean those who serve the
56 school or schools as a whole, in a nonprofessional capacity,
57 including such areas as secretarial, custodial, mainten-
58 ance, transportation, school lunch.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18A-4-1a. Minimum salary for a registered professional nurse employed by
the board, who has less than a bachelor's degree.

§18A-4-2a. State supplemental salaries.

§18A-4-3. Salary increments for principals.

§18A-4-8. Employment term and class titles of service and auxiliary per-
sonnel; definitions.

§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

§18A-4-1. Definitions.

1 For the purpose of this section, salaries shall be defined
2 as: (a) "basic salaries" which shall mean the salaries paid
3 to teachers with zero years of experience and in accord-
4 ance with the classification of certification and of training
5 of said teachers; and (b) "advanced salaries" which shall
6 mean the basic salary plus an experience increment based
7 on the allowable years of experience of the respective
8 teachers in accordance with the schedule established here-
9 in for the applicable classification of certification and of
10 training of said teachers.

11 "Classification of certification" means the class or type
12 of certificate issued by the state superintendent of schools
13 under the statutory provisions of this chapter. "Classifica-
14 tion of training" means the number of collegiate or gradu-
15 ate hours necessary to meet the requirements stipulated
16 in the definitions set forth in the next paragraph in items
17 (2) to (10) inclusive.

18 The column heads of the state minimum salary schedule
19 set forth in section two of this article are defined as fol-
20 lows:

21 (1) "Years of experience" means the number of years

22 the teacher has been employed in the teaching profession,
23 including active work in educational positions other than
24 the public schools, and service in the armed forces of the
25 United States if the teacher were under contract to teach
26 at the time of his induction. For a registered professional
27 nurse employed by a county board of education, "years of
28 experience" means the number of years the nurse has been
29 employed as a public school health nurse, including active
30 work in a nursing position related to education, and ser-
31 vice in the armed forces if the nurse was under contract
32 with the county board at the time of induction. For the
33 purpose of section two of this article, the experience of a
34 teacher or a nurse shall be limited to that allowed under
35 his training classification as found in the minimum salary
36 schedule.

37 (2) "Fourth class" means all certificates previously
38 identified as (a) "certificates secured by examinations,"
39 (b) "other first grade certificates."

40 (3) "Third class" means all certificates previously iden-
41 tified as (a) "standard normal certificates" and (b) "third
42 class temporary (sixty-four semester hours) certificates."

43 (4) "Second class" means all certificates previously
44 identified as "second class temporary certificates based
45 upon the required ninety-six hours of college work."

46 (5) "A.B." mean a bachelor's degree, from an accredited
47 institution of higher education, which has been issued to,
48 or for which the requirements for such have been met by,
49 a person who qualifies for or holds a professional certifi-
50 cate or its equivalent. A registered professional nurse
51 with a bachelor's degree, who is licensed by the West Vir-
52 ginia board of examiners for registered professional nur-
53 ses and employed by a county board of education, shall
54 be within this classification for payment in accordance
55 with sections two and two-a of this article.

56 (6) "A.B. + 15" means a bachelor's degree as defined
57 above plus fifteen hours of graduate work, from an accre-
58 dited institution of higher education certified to do gradu-
59 ate work, in an approved planned program at the graduate

60 level which requirements have been met by a person who
61 qualifies for or holds a professional certificate or its
62 equivalent.

63 (7) "M.A." means a master's degree, earned in an insti-
64 tution of higher education approved to do graduate work,
65 which has been issued to, or the requirements for such
66 have been met by, a person who qualifies for or holds a
67 professional certificate or its equivalent.

68 (8) "M.A. + 15" means the above-defined master's de-
69 gree plus fifteen hours of graduate work, earned in an
70 institution of higher education approved to do graduate
71 work, if the person is qualified for or holds a professional
72 certificate or its equivalent.

73 (9) "M.A. + 30" means the above-defined master's de-
74 gree plus thirty graduate hours, earned in an institution
75 approved to do graduate work, if the person is qualified
76 for or holds a professional certificate or its equivalent.

77 (10) "Doctorate" means a doctor's degree, earned from
78 a university qualified and approved to confer such a
79 degree, which has been issued to or the requirements for
80 such have been met by a person who qualifies for or holds
81 a professional certificate or its equivalent.

**§18A-4-1a. Minimum salary for a registered professional nurse
employed by the board, who has less than a
bachelor's degree.**

1 A registered professional nurse, licensed by the West
2 Virginia board of examiners for registered professional
3 nurses and employed by a county board of education,
4 who has less than a bachelor's degree, shall receive a
5 salary not less than that provided in sections two and
6 two-a of this article and in accordance with the follow-
7 ing:

8 (a) A registered professional nurse who has com-
9 pleted a two-year nursing program (sixty-four semester
10 hours) shall be paid not less than the salary for a teacher
11 whose classification of training is "third class" as defined

12 in subparagraph (3), section one of this article, such
13 salary to include allowable years of experience, and

14 (b) A registered professional nurse who has com-
15 pleted a three-year nursing program (ninety-six hours)
16 shall be paid not less than the salary for a teacher whose
17 classification of training is "second class" as defined in
18 subparagraph (4), section one of this article, such salary
19 to include allowable years of experience.

20 The salary provided under this section and the ad-
21 ditional fixed charge payments required therefor shall be
22 paid outside the public school support plan provided for
23 in article nine-a, chapter eighteen of this code.

§18A-4-2a. State supplemental salaries.

1 In addition to the amount of state minimum salary
2 received pursuant to section two of this article, on and
3 after the first day of July, one thousand nine hundred
4 eighty, each teacher shall receive as a supplement there-
5 to the specific additional amount prescribed in this section
6 for such teacher's years of experience and educational
7 level as hereinafter set forth. This salary supplement and
8 the increased fixed charges payments hereby required
9 shall be paid outside the West Virginia public school sup-
10 port plan provided for in article nine-a, chapter eighteen
11 of the code.

STATE SUPPLEMENTAL SALARY SCHEDULE

Educational Level

(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) AB	(6) AB +15	(7) MA	(8) MA +15	(9) MA +30	(10) Doc- torate
0	2300	2300	2300	2300	2510	2720	2930	3140	3350
1	2300	2300	2300	2416	2626	2836	3046	3256	3466
2	2300	2300	2300	2532	2742	2952	3162	3372	3582
3	2300	2300	2300	2648	2858	3068	3278	3488	3698
4	2300	2300	2300	2764	2974	3184	3394	3604	3814
5	2300	2300	2300	2880	3090	3300	3510	3720	3930
6	2300	2300	2300	2996	3206	3416	3626	3836	4046
7		2300	2300	3112	3322	3532	3742	3952	4162
8		2300	2300	3228	3438	3648	3858	4068	4278
9			2300	3344	3554	3764	3974	4184	4394
10			2300	3460	3670	3880	4090	4300	4510

11	3576	3786	3996	4206	4416	4626
12	3692	3902	4112	4322	4532	4742
13	3808	4018	4228	4438	4648	4858
14			4344	4554	4764	4974
15			4460	4670	4880	5090
16			4576	4786	4996	5206
17					5112	5322
18					5228	5438
19					5344	5554

§18A-4-3. Salary increments for principals.

1 In addition to the present recommended salary sched-
 2 ules in each county for principals, the following schedule
 3 of monthly salary increments for principals shall be paid
 4 from state funds appropriated therefor, beginning with
 5 the fiscal year commencing on the first day of July, one
 6 thousand nine hundred eighty.

No. of Teachers	Bachelor's Degree		
	or Lesser Certification	Master's Degree	Principal's Certificate
2	6.50	6.75	11.75
3	8.50	9.00	13.75
4	10.25	11.75	16.25
5	12.75	14.50	19.25
6	15.50	17.00	22.00
7	17.25	19.50	24.50
8	19.50	22.00	26.50
9	21.50	24.50	29.25
10	23.75	26.50	31.75
11	25.50	29.25	34.25
12	27.50	31.75	36.50
13	29.00	34.25	38.75
14	31.00	36.50	41.50
15	32.50	38.75	44.00
16	33.00	39.75	44.75
17	33.75	40.50	45.25
18	34.50	41.25	45.75
19	35.00	41.75	46.75
20 or more	36.00	42.25	47.25

§18A-4-8. Employment term and class titles of service and auxiliary personnel; definitions.

1 The purpose of this section is to establish an employ-
2 ment term and class titles for auxiliary and service
3 personnel. The employment term for auxiliary and
4 service personnel shall be no less than ten months, a
5 month being defined as twenty employment days:
6 *Provided*, That the county board of education may con-
7 tract with all or part of these personnel for a longer
8 term. The beginning and closing dates of the ten-month
9 term shall not exceed forty-three weeks. Auxiliary and
10 service personnel employed on a yearly or twelve-month
11 basis may be employed by calendar months. Whenever
12 there is a change in job assignment during the school
13 year, the minimum pay scale and any county supple-
14 ment shall be applicable.

15 Auxiliary and service personnel employed in the same
16 classification for more than the two hundred day mini-
17 mum employment term shall be paid for additional em-
18 ployment at a daily rate of not less than the daily rate
19 paid for the two hundred day minimum employment
20 term.

21 Custodians required to work a daily work schedule
22 that is interrupted, that is, who do not work a continuous
23 period in one day, shall be paid additional compensation
24 which shall be equal to at least one eighth of their total
25 salary as provided by their state minimum salary and
26 any county pay supplement, and payable entirely from
27 county funds.

28 Upon the change in classification or upon meeting the
29 requirements of an advanced classification of or by any
30 employee, his salary shall be made to comply with the
31 requirements of this article, and to any county salary
32 schedule in excess of the minimum requirements of this
33 article, based upon his advanced classification and allow-
34 able years of employment.

35 An employee's contract as provided in sections four
36 and five, article two of this chapter shall state the
37 appropriate monthly salary the employee is to be paid
38 based on the class title as provided in this article and

39 any county salary schedule in excess of the minimum
40 requirements of this article.

41 The column heads of the state minimum pay scale and
42 class titles, set forth in section eight-a of this article, are
43 defined as follows:

44 "Pay grade" means the monthly salary applicable to
45 class titles of auxiliary and service personnel.

46 "Years of employment" means the number of years
47 which an employee classified as auxiliary or service
48 personnel has been employed by a board of education
49 in any position prior to or subsequent to the effective
50 date of this section and including service in the armed
51 forces of the United States if the employee were em-
52 ployed at the time of his induction. For the purpose of
53 section eight-a of this article, years of employment shall
54 be limited to the number of years shown and allowed
55 under the state minimum pay scale as set forth in sec-
56 tion eight-a of this article.

57 "Class title" means the name of the position or job
58 held by auxiliary and service personnel.

59 "Accountant I" means personnel employed to maintain
60 payroll records and reports and perform one or more
61 operations relating to a phase of the total payroll.

62 "Accountant II" means personnel employed to main-
63 tain accounting records and to be responsible for the
64 accounting process associated with billing, budgets, pur-
65 chasing and related operations.

66 "Accountant III" means personnel who are employed
67 in the county board of education office to manage and
68 supervise accounts payable and/or payroll procedures.

69 "Aide I" means auxiliary personnel as defined in sec-
70 tion one, article one of this chapter.

71 "Aide II" means auxiliary personnel as defined in
72 section one, article one of this chapter, who have com-
73 pleted a training program approved by the state board
74 of education, or who hold a high school diploma or have
75 received a general educational development certificate.

76 "Aide III" means auxiliary personnel who hold a high
77 school diploma or a general educational development

78 certificate, and have completed six semester hours of
79 college credit at a higher educational institution.

80 "Audiovisual technician" means personnel employed to
81 perform minor maintenance on audiovisual equipment,
82 films, supplies and the filling of requests for equip-
83 ment.

84 "Bus operator" means personnel employed to operate
85 school buses and other school transportation vehicles as
86 provided by the state board of education.

87 "Buyer" means personnel employed to review and
88 write specifications, negotiate purchase bids and recom-
89 mend purchase agreements for materials and services
90 that meet predetermined specifications at the lowest
91 available costs.

92 "Cabinetmaker" means personnel employed to con-
93 struct cabinets, tables, bookcases and other furniture.

94 "Cafeteria manager" means personnel employed to
95 direct the operation of a food services program in a
96 school, including assigning duties to employees, approv-
97 ing requisitions for supplies and repairs, keeping inven-
98 tories, inspecting areas to maintain high standards of
99 sanitation, preparing financial reports and keeping
100 records pertinent to food services of a school.

101 "Carpenter I" means personnel classified as a
102 carpenter's helper.

103 "Carpenter II" means personnel classified as a journey-
104 man carpenter.

105 "Chief mechanic" means personnel employed to be
106 responsible for directing activities which ensure that
107 student transportation or other board-owned vehicles are
108 properly and safely maintained.

109 "Clerk I" means personnel employed to perform clerical
110 tasks.

111 "Clerk II" means personnel employed to perform gener-
112 al clerical tasks, prepare reports and tabulations and oper-
113 ate office machines.

114 "Computer operators" means qualified personnel em-
115 ployed to operate computers.

116 "Cook I" means personnel employed as a cook's helper.

117 "Cook II" means personnel employed to interpret menus
118 to prepare and serve meals in a food service program
119 of a school and shall include personnel who have been
120 employed as a "Cook I" for a period of four years, if such
121 personnel have not been elevated to this classification
122 within that period of time.

123 "Cook III" means personnel employed to prepare and
124 serve meals, make reports, prepare requisitions for sup-
125 plies, order equipment and repairs for a food service
126 program of a school system.

127 "Crew leader" means personnel employed to organize
128 the work for a crew of maintenance employees to carry
129 out assigned projects.

130 "Custodian I" means personnel employed to keep build-
131 ings clean and free of refuse.

132 "Custodian II" means personnel employed as a watch-
133 man or groundsman.

134 "Custodian III" means personnel employed to keep
135 buildings clean and free of refuse, to operate the heat-
136 ing or cooling systems and to make minor repairs.

137 "Custodian IV" means personnel employed as head
138 custodians. In addition to providing services as defined
139 in "Custodian III," their duties may include supervising
140 other custodian personnel.

141 "Director or coordinator of services" means personnel
142 not defined as professional personnel or professional
143 educators in section one, article one of this chapter, who
144 are assigned to direct a department or division.

145 "Draftsman" means personnel employed to plan, design
146 and produce detailed architectural/engineering drawings.

147 "Electrician I" means personnel employed as an
148 apprentice electrician helper or who holds an electrician
149 helper license issued by the state fire marshal.

150 "Electrician II" means personnel employed as an
151 electrician journeyman or who holds a journeyman
152 electrician license issued by the state fire marshal.

153 "Electronic technician I" means personnel employed
154 at the apprentice level to repair and maintain electronic
155 equipment.

156 "Electronic technician II" means personnel employed at
157 the journeyman level to repair and maintain electronic
158 equipment.

159 "Executive secretary" means personnel employed as
160 the county school superintendent's secretary or as a
161 secretary who is assigned to a position characterized by
162 significant administrative duties.

163 "Food services supervisor" means qualified personnel
164 not defined as professional personnel or professional
165 educators as in section one, article one of this chapter,
166 employed to manage and supervise a county school sys-
167 tem's food service program. The duties would include
168 preparing in-service training programs for cooks and
169 food service employees, instructing personnel in the areas
170 of quantity cooking with economy and efficiency, and
171 keeping aggregate records and reports.

172 "Foremen" means skilled persons employed for super-
173 vision of personnel who work in the areas of repair and
174 maintenance of school property and equipment.

175 "General maintenance" means personnel employed as
176 helpers to skilled maintenance employees and to perform
177 minor repairs to equipment and buildings of a county
178 school system.

179 "Glazier" means personnel employed to replace glass
180 or other materials in windows and doors and to do minor
181 carpentry tasks.

182 "Graphic artist" means personnel employed to prepare
183 graphic illustrations.

184 "Groundsmen" means personnel employed to perform
185 duties that relate to the appearance, repair and general
186 care of school grounds in a county school system. Ad-
187 ditional assignments may include the operation of a small
188 heating plant and routine cleaning duties in buildings.

189 "Handyman" means personnel employed to perform
190 routine manual tasks in any operation of the county
191 school system.

192 "Heating and air conditioning mechanic I" means
193 personnel employed at the apprentice level to install,
194 repair and maintain heating and air conditioning plants
195 and related electrical equipment.

- 196 "Heating and air conditioning mechanic II" means
197 personnel employed at the journeyman level to install,
198 repair and maintain heating and air conditioning plants
199 and related electrical equipment.
- 200 "Heavy equipment operator" means personnel employed
201 to operate heavy equipment.
- 202 "Inventory supervisor" means personnel who are em-
203 ployed to supervise or maintain operations in the receipt,
204 storage, inventory and issuance of materials and supplies.
- 205 "Key punch operator" means qualified personnel em-
206 ployed to operate key punch machines or verifying
207 machines.
- 208 "Locksmith" means personnel employed to repair and
209 maintain locks and safes.
- 210 "Lubrication man" means personnel employed to lubri-
211 cate and service gasoline or diesel-powered equipment
212 of a county school system.
- 213 "Machinist" means personnel employed to perform
214 machinist tasks which include the ability to operate a
215 lathe, planer, shaper, threading machine and wheel
216 press. Such personnel should also have ability to work
217 from blueprints and drawings.
- 218 "Maintenance clerk" means personnel employed to
219 maintain and control a stocking facility to keep adequate
220 tools and supplies on hand for daily withdrawal for all
221 school maintenance crafts.
- 222 "Mason" means personnel employed to perform tasks
223 connected with brick and block laying and carpentry
224 tasks related to such laying.
225. "Mechanic" means personnel employed who can
226 independently perform skilled duties in the maintenance
227 and repair of automobiles, school buses and other
228 mechanical and mobile equipment to use in a county
229 school system.
- 230 "Mechanic assistant" means personnel employed as a
231 mechanic apprentice and helper.
- 232 "Office equipment repairman I" means personnel em-
233 ployed as an office equipment repairman apprentice or
234 helper.

235 "Office equipment repairman II" means personnel
236 responsible for servicing and repairing all office machines
237 and equipment. Personnel shall be responsible for parts
238 being purchased necessary for the proper operation of
239 a program of continuous maintenance and repair.

240 "Painter" means personnel employed to perform duties
241 of painting, finishing and decorating of wood, metal and
242 concrete surfaces of buildings, other structures, equip-
243 ment, machinery and furnishings of a county school
244 system.

245 "Plumber I" means personnel employed as an ap-
246 prentice plumber and helper.

247 "Plumber II" means personnel employed as a journey-
248 man plumber.

249 "Printing operator" means personnel employed to oper-
250 ate duplication equipment, and as required, to cut, col-
251 late, staple, bind and shelve materials.

252 "Printing supervisor" means personnel employed to
253 supervise the operation of a print shop.

254 "Programmer" means personnel employed to design
255 and prepare programs for computer operation.

256 "Roofing/sheet metal mechanic" means personnel em-
257 ployed to install, repair, fabricate and maintain roofs,
258 gutters, flashing and duct work for heating and ventila-
259 tion.

260 "Sanitation plant operator" means personnel employed
261 to operate and maintain a water or sewage treatment
262 plant to ensure the safety of the plant's effluent for human
263 consumption or environmental protection.

264 "School bus supervisor" means qualified personnel
265 employed to assist in selecting school bus operators and
266 routing and scheduling of school buses, operate a bus
267 when needed, relay instructions to bus operators, plan
268 emergency routing of buses and promoting good relation-
269 ships with parents, pupils, bus operators and other em-
270 ployees.

271 "Secretary I" means personnel employed to transcribe
272 from notes or mechanical equipment, receive callers, per-
273 form clerical tasks, prepare reports and operate office
274 machines.

275 "Secretary II" means personnel employed in any
276 elementary, secondary, kindergarten, nursery, special
277 education, vocational or any other school as a secretary.
278 The duties may include performing general clerical
279 tasks, transcribing from notes or stenotype or mechanical
280 equipment or a sound-producing machine, preparing re-
281 ports, receiving callers and referring them to proper
282 persons, operating office machines, keeping records and
283 handling routine correspondence. There is nothing implied
284 herein that would prevent such employees from holding
285 or being elevated to a higher classification.

286 "Secretary III" means personnel assigned to the county
287 board of education office administrators in charge of
288 various instructional, maintenance, transportation, food
289 services, operations and health departments, federal pro-
290 grams or departments with particular responsibilities of
291 purchasing and financial control.

292 "Supervisor of maintenance" means skilled personnel
293 not defined as professional personnel or professional edu-
294 cators as in section one, article one of this chapter. His
295 responsibilities would include directing the upkeep of
296 buildings and shops, issuing instructions to subordinates
297 relating to cleaning, repairs and maintenance of all
298 structures, mechanical and electrical equipment of a
299 board of education.

300 "Supervisor of transportation" means qualified person-
301 nel employed to direct school transportation activities,
302 properly and safely, and to supervise the maintenance
303 and repair of vehicles, buses, and other mechanical and
304 mobile equipment used by the county school system.

305 "Switchboard operator-receptionist" means personnel
306 employed to refer incoming calls, to assume contact with
307 the public, to direct and to give instructions as neces-
308 sary, to operate switchboard equipment and to provide
309 clerical assistance.

310 "Truck driver" means personnel employed to operate
311 light or heavy duty gasoline and diesel-powered vehicles.

312 "Warehouse clerk" means personnel employed to be
313 responsible for receiving, storing, packing and shipping
314 goods.

315 "Watchman" means personnel employed to protect
316 school property against damage or theft. Additional as-
317 signments may include operation of a small heating plant
318 and routine cleaning duties.

319 "Welder" means personnel employed to provide
320 acetylene or electric welding services for a school system.

321 In addition to the compensation provided for in section
322 eight-a of this article, for auxiliary and service personnel,
323 each auxiliary and service employee shall, notwithstand-
324 ing any provisions in this code to the contrary, be en-
325 titled to all auxiliary and service personnel employee
326 rights, privileges and benefits provided under this or any
327 other chapter of this code without regard to such em-
328 ployee's hours of employment or the methods or sources of
329 compensation.

330 Auxiliary and service personnel whose years of em-
331 ployment exceed the number of years shown and pro-
332 vided for under the state minimum pay scale set forth
333 in section eight-a of this article, may not be paid less
334 than the amount shown for the maximum years of em-
335 ployment shown and provided for in the classification
336 in which he is employed.

337 The county board of education may establish salary
338 schedules which shall be in excess of the state minimum
339 fixed by this article, these county schedules to be uni-
340 form throughout the county with regard to any training
341 classification, experience, years of employment, responsi-
342 bility, duties, pupil participation, pupil enrollment, size
343 of buildings, operation of equipment or other require-
344 ments. Uniformity shall apply to any additional salary
345 increments or compensation for all persons performing
346 like assignments and duties within the county. In
347 establishing such local salary schedules no county, from
348 the effective date of this article, shall reduce local funds
349 allocated for auxiliary and service personnel salaries used
350 for supplementing federal and state funds provided for
351 such salaries.

352 The county boards shall review each auxiliary and
353 service personnel employee job classification annually
354 and shall reclassify all auxiliary and service employees
355 as required by such job classifications. The state superin-

356 tendent of schools is hereby authorized to withhold state
357 funds appropriated pursuant to this article for salaries
358 for auxiliary and service personnel who are improperly
359 classified by such county boards.

360 The state board of education is authorized to establish
361 other class titles of auxiliary and service personnel posi-
362 tions and jobs not listed in this section. The state board
363 of education is further authorized to provide appropriate
364 pay grades for such positions and jobs but pay shall be
365 established within the minimum salary scale in section
366 eight-a of this article.

367 No auxiliary or service employee, without his written
368 consent, may be reclassified by class title or relegated to
369 any condition of employment which would result in a
370 reduction of his salary, rate of pay, compensation or
371 benefits earned during the current fiscal year or which
372 would result in a reduction of his salary, rate of pay,
373 compensation or benefits for which he would qualify
374 by continuing in the same job position and classification
375 held during said fiscal year.

376 Any board failing to comply with the provisions of this
377 article may be compelled to do so by mandamus, and
378 shall be liable to any party prevailing against the board
379 for court costs and his reasonable attorney fee, as de-
380 termined and established by the court.

381 The new provisions of this section shall become effec-
382 tive the first day of July, one thousand nine hundred
383 eighty.

384 The state superintendent of schools shall compile, from
385 information submitted by the county boards of educa-
386 tion, a report containing the number of personnel, pay
387 classifications and years of experience of custodians and
388 other auxiliary and service personnel who are required
389 to work an interrupted daily work schedule, and the
390 ratio of cooks to school meals served and shall report
391 to the Legislature on the first day of the regular session
392 thereof in the year one thousand nine hundred eighty-one
393 his findings, conclusions and recommendations with
394 respect to such matters.

§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

YEARS OF EMPLOY- MENT	PAY GRADE							
	A	B	C	D	E	F	G	H
0	618	638	678	728	778	838	868	938
1	631	651	691	741	791	851	881	951
2	644	664	704	754	804	864	894	964
3	657	677	717	767	817	877	907	977
4	670	690	730	780	830	890	920	990
5	683	703	743	793	843	903	933	1003
6	696	716	756	806	856	916	946	1016
7	709	729	769	819	869	929	959	1029
8	722	742	782	832	882	942	972	1042
9	735	755	795	845	895	955	985	1055
10	748	768	808	858	908	968	998	1068
11	761	781	821	871	921	981	1011	1081
12	774	794	834	884	934	994	1024	1094
13	787	807	847	897	947	1007	1037	1107

CLASS TITLE

PAY GRADE

Accountant I	D
Accountant II	E
Accountant III	F
Aide I	A
Aide II	B
Aide III	C
Audiovisual Technician	C
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager	D
Carpenter I	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E

Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	F
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Locksmith	G
Lubrication Man	C
Machinist	F
Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D

Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	F
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C
Watchman	B
Welder	F

1 On and after the first day of July, one thousand nine
 2 hundred seventy-nine, the minimum monthly pay for
 3 each auxiliary and service employee whose employment
 4 is for a period of more than three and one-half hours
 5 a day shall be at least the amounts indicated in the
 6 "state minimum pay scale" as set forth in this section,
 7 and the minimum monthly pay for each auxiliary and
 8 service employee whose employment is for a period of
 9 three and one-half hours or less a day shall be at least
 10 one half the amount indicated in the "state minimum
 11 pay scale" set forth in this section.

CHAPTER 44

(Com. Sub. for H. B. 1676—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twelve, fourteen and fifteen, article nine-a of said chapter, all relating to requiring statistical computations for school aid formula and comprehensive educational programs to

be based on data from second month of prior school term rather than third month of prior school term.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and sections twelve, fourteen and fifteen, article nine-a of said chapter, be amended and reenacted all to read as follows:

Article

2. State Board of Education.

9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-23. Comprehensive educational programs; standards, etc.; evaluation and approval; allocation and distribution of funds; distribution of excess funds.

1 The West Virginia board of education, through the state
2 superintendent of schools, shall establish standards and criteria
3 especially designed to guide the development of plans for
4 a comprehensive educational program or programs in county
5 school systems, to provide for their evaluation and approval,
6 and to provide, as herein directed, for the allocation and
7 distribution of state funds, which may be appropriated to assist
8 county school systems to meet additional costs of development
9 and operation of such programs. The plans shall include,
10 but need not be restricted to an analysis of existing program
11 area deficiencies and the procedures for their correction. The
12 plans shall be submitted to and be approved by the West Vir-
13 ginia board of education.

14 County plans shall include one or more of the following:
15 (1) A plan to initiate comprehensive educational programs in
16 any or all areas or parts of the curriculum, and provide
17 necessary supporting services, or (2) a plan to provide for
18 the maintenance or extension of areas or parts of com-
19 prehensive educational programs developed or established
20 under this section, or (3) a plan to give essential aid for
21 instruction or supporting services for enrichment of
22 curriculum in schools designated as isolated by the West
23 Virginia board of education where consolidation of schools

24 or the development of county comprehensive educational pro-
25 grams are not possible or feasible.

26 The state superintendent of schools shall provide assistance
27 to counties in the development and preparation of their plans
28 for a comprehensive educational program or programs in
29 order to ensure that every county may have the opportunity
30 to fully participate and receive its maximum share of the funds
31 available. All plans shall be submitted to the West Virginia
32 board of education on or before the first day of July of the
33 school year in which they are operative. The state superinten-
34 dent of schools shall as soon as possible and before the first
35 day of August each year notify any county whose plan fails
36 to receive approval specifying the manner in which the plan
37 fails to meet the criteria established and suggesting the neces-
38 sary corrections. If the county modifies its plan so that its
39 program or programs become acceptable on or before the first
40 day of September of that year, the county shall be entitled
41 to receive the computed share of its allocation for which it
42 is eligible under its approved plan.

43 The total potential cost of the comprehensive educational
44 program for each county shall be determined prior to the
45 first day of July by multiplying the applicable net enroll-
46 ments at the close of the second month of the current school
47 term by the following amounts: Ten dollars for an adult in
48 a public school program; ten dollars per senior high school
49 student; seven dollars and fifty cents per junior high school
50 student; and five dollars per elementary school student, in-
51 cluding kindergarten. If the appropriation is not sufficient
52 to provide for all counties their total potential costs as here-
53 in set forth, the allocation to all counties shall be reduced
54 proportionately to secure a total which matches the appropria-
55 tion.

56 Funds allocated to the counties shall be distributed to
57 them annually not later than the first day of November on
58 the basis of net enrollment in approved programs which are
59 part of their current comprehensive educational plan and the
60 funds distributed shall be computed as provided herein.

61 The West Virginia board of education shall establish by

62 regulation the number of areas in which a county shall partici-
63 pate to qualify for full or partial distribution of its allocation.
64 The number of curriculum areas in which a county shall be
65 required to participate to qualify for its full allocation shall
66 depend upon factors such as county size, population sparsity,
67 topography and availability of school staff personnel. In no
68 case shall the allocation for any one county exceed the amount
69 derived from application of the maximum pupil allocation as
70 hereinbefore set forth.

71 If the county plans approved by the first day of September
72 do not utilize the total allocations by reason of the plan
73 or plans of one or more counties not requiring the full alloca-
74 tions or by failure of one or more counties to submit an
75 acceptable plan or plans by the first day of September, then
76 those moneys which were available to such county or counties
77 shall be declared by the state board of education to be excess
78 funds. These excess funds shall be available for that year
79 only for special distribution. All counties shall be eligible
80 for additional moneys as a special distribution from excess
81 funds if, and to the extent that, such county or counties ap-
82 proved plan or plans require funds in excess of the amount
83 allocated to each county on or before the first day of Septem-
84 ber: *Provided*, That no county may receive any funds in ex-
85 cess of its total potential cost as determined prior to the first
86 day of July. If the moneys for which the counties are eligible
87 from the special distribution of excess funds exceed the total
88 amount available for such distribution, the special distribu-
89 tion to each county shall be reduced proportionately. It is
90 the intention to distribute all excess funds, in any given year,
91 on a pro rata basis to all counties who have approved com-
92 prehensive educational programs for that year and who have
93 not received their total potential funds.

94 Appropriations for the purpose of this section shall be
95 used only to meet the requirements of the allocation schedule
96 and of approved county plans.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§12-9A-12. County basic foundation; total basic state aid allowance.

§18-9A-14. Incentive for program improvement.

§18-9A-15. Allowance for increased enrollment.

§18-9A-12. County basic foundation; total basic state aid allowance.

1 The basic foundation program for each county for the
2 fiscal year shall be the sum of the amounts computed in
3 accordance with the provisions of sections four, five, six,
4 seven, eight, nine and ten of this article. On the first
5 working day of July in each year, the state board shall
6 determine the basic foundation program for each county for
7 that fiscal year. Data used in the computations relating to
8 net and adjusted enrollment, and the number of professional
9 educators, shall be for the second month of the prior school
10 term. Transportation expenditures used in these computations
11 shall be for the most recent year in which data are available.
12 The allocated state aid share of the county's basic foundation
13 program shall be the difference between the cost of its basic
14 foundation program and the county's local share as determined
15 in section eleven of this article.

16 Total basic state aid to the county shall be the computed
17 state share of basic foundation support. After such compu-
18 tation is completed, the state board shall immediately certify
19 to each county board the amount of state aid allocated to
20 the county for that fiscal year, subject to any qualifying pro-
21 visions of this article.

§18-9A-14. Incentive for program improvement.

1 In order to encourage counties to move toward new and
2 improved programs and to reduce class size, counties having
3 ratios of adjusted enrollment to professional staff higher
4 than the state average will be granted advance funds to
5 employ sufficient additional staff to reach the state average:
6 *Provided*, That in any one fiscal year no more than one half
7 of such additional staff may be counted under this provision.
8 Such funds shall be granted to each eligible county based on
9 data at the end of the second month of school but only on
10 the basis of actual staff members employed.

§18-9A-15. Allowance for increased enrollment.

1 To provide for the support of increased net enrollments
2 in the counties in a school year over the net enrollments

3 used in the computation of total state aid for that year,
4 there shall be appropriated for that purpose from the general
5 revenue fund an amount equal to the average total state aid
6 per net pupil multiplied by the total of all the increases
7 in the net enrollments of the counties made by comparing
8 the most recent reports of net enrollment for the second
9 school month to the immediately previous year's reports for
10 the same school month.

11 Upon determination of the several increases in the respec-
12 tive counties' net enrollments, as of the close of the second
13 school month, each county showing such increase shall be
14 allocated an amount equal to that county's average per
15 net pupil total state aid multiplied by the increase in that
16 county's net enrollment fund as provided heretofore. Such
17 allocations shall be distributed not later than December thirty-
18 one of each year to the counties having increases in net
19 enrollment as heretofore provided. If the amount appro-
20 priated for this purpose shall not be sufficient to provide
21 payment in full for the total of these several allocations,
22 each county allocation shall be reduced to an amount which
23 is proportionate to the appropriation compared to the total
24 of the several allocations, and the allocations as thus adjusted
25 shall be distributed to the counties as provided in this section.

26 No provision of this section shall be construed to in-
27 any way affect the allocation of moneys for educational
28 purposes to a county under other provisions of law.

CHAPTER 45

(S. B. 89—By Mr. Boettner)

[Passed February 27, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authorization of county boards of education to provide

uniforms for employees; and relating to the authorization of county boards of education to provide group insurance for employees.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter
2 and the rules and regulations of the state board, shall
3 have authority:

4 (1) To control and manage all of the schools and school
5 interests for all school activities and upon all school
6 property, whether owned or leased by the county, includ-
7 ing the authority to require that records be kept of all
8 receipts and disbursements of all funds collected or re-
9 ceived by any principal, teacher, student or other person
10 in connection therewith, any programs, activities or other
11 endeavors of any nature operated or carried on by or in
12 the name of the school, or any organization or body
13 directly connected with the school, to audit such records
14 and to conserve such funds, which shall be deemed quasi-
15 public moneys, including securing surety bonds by ex-
16 penditure of board moneys;

17 (2) To establish schools, from preschool through high
18 school, inclusive of vocational schools; and to establish
19 schools and programs, or both, for post high school in-
20 struction, subject to approval of the state board of
21 education;

22 (3) To close any school which is unnecessary and to
23 assign the pupils thereof to other schools: *Provided*, That
24 such closing shall be officially acted upon and teachers and
25 service personnel involved notified on or before the first
26 Monday in May, in the same manner as provided in section
27 four of this article, except in an emergency, subject to the

28 approval of the state superintendent, or under subdivision
29 (5) of this section;

30 (4) To consolidate schools;

31 (5) To close any elementary school whose average
32 daily attendance falls below twenty pupils for two months
33 in succession, and send the pupils to other schools in the
34 district or to schools in adjoining districts. If the teachers
35 in the school so closed are not transferred or reassigned to
36 other schools, they shall receive one month's salary;

37 (6) (a) To provide at public expense adequate means
38 of transportation, including transportation across county
39 lines, for all children of school age who live more than two
40 miles distance from school by the nearest available road;
41 to provide at public expense and according to such
42 regulations as the board may establish, adequate means of
43 transportation for school children participating in board-
44 approved curricular and extracurricular activities; and to
45 provide in addition thereto, at public expense, by rules
46 and regulations and within the available revenues, trans-
47 portation for those within two miles distance; to provide
48 in addition thereto, at no cost to the board and according
49 to rules and regulations established by the board, trans-
50 portation for participants in projects operated, financed,
51 sponsored or approved by the commission on aging:
52 *Provided*, That all costs and expenses incident in any way
53 to transportation for projects connected with the commis-
54 sion on aging shall be borne by such commission, or the
55 local or county chapter thereof: *Provided further*, That
56 in all cases the buses or other transportation facilities
57 owned by the board of education shall be driven or oper-
58 ated only by drivers regularly employed by the board of
59 education: *Provided, however*, That buses shall be used
60 for extracurricular activities as herein provided only
61 when the insurance provided for by this section shall have
62 been effected;

63 (b) To enter into agreements with one another to
64 provide, on a cooperative basis, adequate means of trans-
65 portation across county lines for children of school age

66 subject to the conditions and restrictions of subdivisions
67 (6) and (7) of this section;

68 (7) To provide at public expense for insurance against
69 the negligence of the drivers of school buses, trucks or
70 other vehicles operated by the board; and if the trans-
71 portation of pupils be contracted, then the contract there-
72 for shall provide that the contractor shall carry insurance
73 against negligence in such an amount as the board shall
74 specify;

75 (8) To provide solely from county funds for all regu-
76 lar full time employees of the board all or any part of
77 the cost of a group plan or plans of insurance coverage
78 not provided or available under the West Virginia Public
79 Employees Insurance Act;

80 (9) To employ and to provide in-service training for
81 teacher aides, the training to be in accordance with rules
82 and regulations of the state board;

83 (10) To establish and conduct a self-supporting dor-
84 mitory for the accommodation of the pupils attending a
85 high school or participating in a post high school program
86 and of persons employed to teach therein;

87 (11) To employ legal counsel;

88 (12) To provide appropriate uniforms for school
89 service personnel;

90 (13) To provide, at public expense, adequate public
91 liability insurance, including professional liability in-
92 surance for board employees.

93 No policy or contract of public liability insurance pro-
94 viding coverage for public liability shall be purchased
95 as provided herein, unless it shall contain a provision or
96 endorsement whereby the company issuing such policy
97 waives, or agrees not to assert as a defense to any claim
98 covered by the terms of such policy, the defense of gov-
99 ernmental immunity. In any action against the board, its
100 officers, agents or employees, in which there is in effect
101 liability insurance coverage in an amount equal to or
102 greater than the amount sued for, the attorney for such

103 board, the attorney for such insurance carrier, or any
104 other attorney who may appear on behalf of the board, its
105 agents, officers or employees shall not set up the defense
106 of governmental immunity in any such action.

107 "Quasi-public funds" as used herein means any money
108 received by any principal, teacher, student or other person
109 for the benefit of the school system as a result of curric-
110 ular or noncurricular activities.

111 The board of each county shall expend under such
112 regulations as it establishes for each child an amount not
113 to exceed the proportion of all school funds of the district
114 that each child would be entitled to receive if all the
115 funds were distributed equally among all the children of
116 school age in the district upon a per capita basis.

CHAPTER 46

(Com. Sub. for H. B. 878—By Mr. Moler and Mr. Gvoyich)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections three, thirteen, seventeen, twenty-five, twenty-six, twenty-eight and thirty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article seven-a, by adding thereto a new section, designated section twenty-six-h, all relating to the state teachers retirement system; eliminating allowances from employers for maintenance of members from the definition of earnable compensation of a member, with certain exceptions; deleting obsolete provision concerning declining membership in the retirement system by employed teacher; excluding from membership in the retirement system any person who is a retired member of the supplemental retirement system; requiring former members reentering the retirement system to repay to the retirement fund the amount withdrawn plus six percent interest compounded annually from date

of withdrawal and providing that the interest paid shall be deposited in the reserve fund; requiring teacher members of the Legislature to contribute to the fund during their absence an amount equal to what they would have normally paid; requiring former members of public employees retirement system to pay six percent interest compounded annually on money withdrawn and subsequently paid into the teachers retirement system for membership and service credit therein; eliminating mandatory retirement at age sixty-five requirement; eliminating obsolete Plan A for alternate computation of member's annuities; providing that certain members employed by the West Virginia board of regents at institutions of higher education use a maximum salary figure for computation of annuities; providing a supplemental benefit for certain annuitants receiving less than a specified annual annuity, contingent on legislative budgetary action, specifying factors for eligibility, and computation thereof; providing for beneficiary member who chose joint life annuity with his then spouse to change such election, one time, upon divorce or annulment of marriage, but only to a maximum annuity plan, as recalculated; increasing the minimum loan to members; allowing the teachers retirement board to adjust upward specified interest rate on loans and setting a maximum thereon; and permitting any one member to apply for only one loan in a year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

§18-7A-13. Membership in retirement system; cessation of membership; payments for membership rights.

§18-7A-17. Statement and computation of teachers' service.

§18-7A-25. Eligibility for retirement allowance.

§18-7A-26. Computation of annuities.

§18-7A-26h. Supplemental benefits for certain annuitants.

§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.

§18-7A-34. Loans to members.

§18-7A-3. Definitions.

1 "Teacher" includes the following persons, if regularly em-
2 ployed for at least half-time service: (a) Any person em-
3 ployed for instructional service in the public schools of West
4 Virginia; (b) principals; (c) public school librarians; (d)
5 superintendents of schools and assistant county superintendents
6 of schools; (e) any county school attendance director holding
7 a West Virginia teacher's certificate; (f) the executive secre-
8 tary of the retirement board; (g) members of the research,
9 extension, administrative or library staffs of the public schools;
10 (h) the state superintendent of schools, heads and assistant
11 heads of the divisions under his supervision, or any other
12 employee thereunder performing services of an educational
13 nature; (i) employees of the state board of education who
14 are performing services of an educational nature; (j) any
15 person employed in a nonteaching capacity by the state
16 board of education, the West Virginia board of regents, any
17 county board of education, the state department of education
18 or the teachers retirement board, if such person was former-
19 ly employed as a teacher in the public schools; (k)
20 all classroom teachers, principals and educational ad-
21 ministrators in schools under the supervision of the state
22 commissioner of public institutions; and (l) employees of
23 the state board of school finance if such person was
24 formerly employed as a teacher in the public schools.

25 "Members of the administrative staff of the public school"
26 includes deans of instruction, deans of men, deans of women,
27 and financial and administrative secretaries.

28 "Members of the extension staff" of the public schools
29 includes every agricultural agent, boys' and girls' club agent,
30 and every member of the agricultural extension staff whose
31 work is not primarily stenographic, clerical or secretarial.

32 "Retirement system" means the state teachers retirement
33 system provided for in this article.

- 34 "Present teacher" means any person who was a teacher
35 within the thirty-five years beginning July one, one thousand
36 nine hundred thirty-four, and whose membership in the
37 retirement system has been continuous.
- 38 "New entrant" means a teacher who is not a present
39 teacher.
- 40 "Present member" means a present teacher who is a
41 member of the retirement system.
- 42 "Total service" means all service as a teacher while a
43 member of the retirement system since last becoming a member
44 and, in addition thereto, his credit for prior service, if any.
- 45 "Prior service" means all service as a teacher completed
46 prior to July first, one thousand nine hundred forty-one,
47 and all service of a present member who was employed as a
48 teacher, and did not contribute to a retirement account because
49 he was legally ineligible for membership during such service.
- 50 "Average final salary" means the average annual salary
51 earned as a teacher during the last fifteen years of prior service,
52 including military service, as provided herein, or if prior ser-
53 vice is less than fifteen years, the average annual salary for
54 that period. If the records for determining each annual salary
55 need cannot reasonably be established by the retirement board,
56 then the term means the average annual salary of the teacher
57 for years for which records are available.
- 58 "Accumulated contributions" means all deposits and all de-
59 ductions from the earnable compensation of a contributor
60 minus the total of all supplemental fees deducted from his
61 compensation.
- 62 "Regular interest" means interest at three percent com-
63 pounded annually, or a higher earnable rate if approved by the
64 retirement board.
- 65 "Refund interest" means interest compounded annually at
66 a rate of three percent.
- 67 "Employer" means the agency of and within the state which
68 has employed or employs a member.

69 "Contributor" means a member of the retirement system
70 who has an account in the teachers accumulation fund.

71 "Beneficiary" means the recipient of annuity payments
72 made under the retirement system.

73 "Refund beneficiary" means the estate of a deceased con-
74 tributor, or such person as he shall have nominated as bene-
75 ficiary of his contributions by written designation duly exe-
76 cuted and filed with the retirement board.

77 "Earnable compensation" means the full compensation
78 actually received by members for service as teachers whether
79 or not a part of such compensation is received from other
80 funds, federal or otherwise, than those provided by the state
81 or its subdivisions. Allowances from employers for maintenance
82 of members shall be deemed a part of earnable compensation
83 for such members whose allowances were approved by the
84 teachers retirement board and contributions to the teachers
85 retirement system were made, in accordance therewith, on or
86 before the effective date of this section.

87 "Annuities" means the annual retirement payments for life
88 granted beneficiaries in accordance with this article.

89 "Member" means a member of the retirement system.

90 "Public schools" means all publicly supported schools,
91 including normal schools, colleges and universities in this
92 state.

93 "Deposit" means a voluntary payment to his account by
94 a member.

95 The masculine gender shall be construed so as to include
96 the feminine.

97 Age in excess of seventy years shall be deemed to be
98 seventy years.

**§18-7A-13. Membership in retirement system; cessation of member-
ship; payments for membership rights.**

1 The membership of the retirement system shall consist of
2 the following:

3 (a) New entrants, whose membership in the system shall
4 be compulsory upon employment as teachers and nonteachers.

5 (b) The membership of the retirement system shall not
6 include any person who is an active member of or who has
7 been retired by the West Virginia public employees retire-
8 ment system, the judge's retirement system, or the retire-
9 ment system of the department of public safety or the sup-
10 plemental retirement system as provided in section four-a,
11 article twenty-three of this chapter.

12 The membership of any person in the retirement system
13 shall cease:

14 (1) Upon the withdrawal of his accumulated contributions
15 after the cessation of teaching service, or (2) upon
16 retirement, or (3) at death, or (4) if service amounts to
17 less than five years in any period of ten consecutive years.
18 For the sole purpose of preventing loss of membership under
19 subdivision (4), a deposit by the member to his individual
20 account in the teachers accumulation fund of an amount
21 equaling his last annual contribution shall be the amount
22 necessary to maintain membership status for a period of one
23 year.

24 Any former member of the retirement system who has
25 withdrawn his accumulated contributions but subsequently re-
26 enters the retirement system shall be permitted to repay to
27 the retirement fund the amount withdrawn, plus interest at a
28 rate of six percent, compounded annually from the date of
29 withdrawal to the date of repayment and shall be accorded all
30 the rights to prior service and experience as he held at the
31 time of withdrawal of such accumulated contributions. The in-
32 terest paid shall be deposited in the reserve fund.

33 No member shall be eligible for prior service credit unless
34 he is eligible for prior service pension, as prescribed by section
35 twenty-two of this article; however, a new entrant who becomes
36 a present teacher as provided in this paragraph shall be deemed
37 eligible for prior service pension upon retirement.

§18-7A-17. Statement and computation of teachers' service.

1 Under such rules and regulations as the retirement board

2 may adopt, each teacher shall file a detailed statement of his
3 length of service as a teacher for which he claims credit. The
4 retirement board shall determine what part of a year is the
5 equivalent of a year of service. In computing such service,
6 however, it shall credit no period of more than a month's dur-
7 ation during which a member was absent without pay, nor shall
8 it credit for more than one year of service performed in any
9 calendar year.

10 For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members
12 of the retirement system for service in any of the armed
13 forces of the United States in any period of national emer-
14 gency within which a federal selective service act was in
15 effect. For purposes of this section, "armed forces" shall
16 include Women's Army Corps, Women's Appointed Volun-
17 teers for Emergency Service, Army Nurse Corps, Spars,
18 Women's Reserve and other similar units officially parts of
19 the military service of the United States. Such military service
20 shall be deemed equivalent to public school teaching, and
21 the salary equivalent for each year of such service shall be
22 the actual salary of the member as a teacher for his first year
23 of teaching after discharge from military service. Prior
24 service credit for military service shall not exceed ten
25 years for any one member, nor shall it exceed twenty-five
26 percent of total service at the time of retirement.

27 For service as a teacher in the employment of the federal
28 government, or a state or territory of the United States, or
29 a governmental subdivision of such state or territory, the
30 retirement board shall grant credit to the member: *Provided,*
31 That the member shall pay to the system double the amount
32 he contributed during the first full year of current employment,
33 times the number of years for which credit is granted, plus
34 interest at a rate to be determined by the retirement board.
35 Such interest shall be deposited in the reserve fund and service
36 credit so granted at the time of retirement shall not exceed the
37 lesser of ten years or fifty percent of the member's total
38 service as a teacher in West Virginia. Any transfer of out-of-
39 state service, as provided in this article, shall not be used
40 to establish eligibility for a retirement allowance and the

41 retirement board shall grant credit for such transferred service
42 as additional service only: *Provided, however,* That a transfer
43 of out-of-state service shall be prohibited if such service is
44 used to obtain a retirement benefit from another retirement
45 system: *Provided further,* That salaries paid to members for
46 service prior to entrance into the retirement system shall
47 not be used to compute the average final salary of such
48 member under the retirement system.

49 No member shall be deemed absent from service as a
50 teacher while serving as a member of the Legislature of the
51 state of West Virginia during any duly constituted session
52 of that body: *Provided,* That the member makes contributions
53 to the system equal to what would have been contributed during
54 the period of absence had he performed his duties as a
55 teacher.

56 No member shall be deemed absent from service as a
57 teacher while serving on leave of absence as an officer with
58 a statewide professional teaching association, or who has
59 served in such capacity, and no retired teacher, who served
60 on such leave of absence while a member, shall be deemed to
61 have been absent from service as a teacher by reason of such
62 service on leave of absence: *Provided,* That the period of
63 service credit granted for such service on leave of absence
64 shall not exceed two years: *Provided, however,* That a mem-
65 ber or retired teacher who is serving or has served as an
66 officer of a statewide professional teaching association shall
67 make deposits to the teachers retirement board, for the time
68 of any such absence, in an amount double the amount which
69 he would have contributed in his regular assignment for a like
70 period of time.

71 The teachers retirement board shall grant service credit
72 to any former or present member of the West Virginia public
73 employees retirement system who has been a contributing
74 member for more than three years, for service previously
75 credited by the public employees retirement system, and (1)
76 shall require the transfer of the member's contributions to
77 the teachers retirement system or (2) shall require a re-
78 payment of the amount withdrawn any time prior to the
79 member's retirement: *Provided,* That there shall be added by

80 the member to the amounts transferred or repaid under this
81 paragraph an amount which shall be sufficient to equal the
82 contributions he would have made had the member been under
83 the teachers retirement system during the period of his
84 membership in the public employees retirement system plus
85 interest at a rate of six percent, compounded annually from the
86 date of withdrawal to the date of repayment. The interest paid
87 shall be deposited in the reserve fund.

88 If a member is not eligible for prior service credit or pen-
89 sion as provided in this article, then his prior service shall not
90 be deemed a part of his total service.

91 A member who withdrew from membership shall be permit-
92 ted to regain his former membership rights as specified in
93 section thirteen of this article only in case he has served
94 two years since his last withdrawal.

95 Subject to the above provisions, the board shall verify
96 as soon as practicable, the statements of service submitted.
97 The retirement board shall issue prior service certificates to
98 all persons eligible therefor under the provisions of this
99 article. Such certificates shall state the length of such prior
100 service credit, but in no case shall the prior service credit
101 exceed forty years.

§18-7A-25. Eligibility for retirement allowance.

1 Any member who has attained the age of sixty years or
2 who has had thirty-five years of total service as a teacher
3 in West Virginia, regardless of age, shall be eligible for an
4 annuity. No new entrant nor present member shall be eligible
5 for an annuity, however, if either has less than five years of
6 service to his credit.

7 Any member who has attained the age of fifty-five years
8 and who has served thirty years as a teacher in West Virginia
9 shall be eligible for an annuity.

10 The request for any annuity shall be made by the member
11 in writing to the retirement board, but in case of retirement
12 for disability, the written request may be made by either
13 the member or the employer.

14 A member shall be eligible for annuity for disability, if
15 he satisfies the conditions in both (a) and (b) as follows:

16 (a) His service as a teacher in West Virginia must total
17 at least ten years, and service as a teacher must have been
18 terminated because of disability, which disability must have
19 caused absence from service for at least six months before
20 his application for disability annuity is approved.

21 (b) An examination by a physician or physicians selected
22 by the retirement board must show that the member is at the
23 time mentally or physically incapacitated for service as a
24 teacher, that for such service the disability is total and likely
25 to be permanent, and that he should be retired in consequence
26 thereof.

27 Continuance of the disability of the retired teacher shall
28 be established by medical examination, as prescribed in
29 the preceding paragraph, annually for five years after re-
30 tirement, and thereafter at such times as the retirement board
31 may require. Payment of the disability annuity provided in
32 this article shall cease immediately, if the retirement board
33 finds that the disability of the retired teacher no longer exists,
34 or if the retired teacher refuses to submit to medical examina-
35 tion as required by this section.

§18-7A-26. Computation of annuities.

1 Annuitants whose annuities were approved by the retire-
2 ment board effective before July first, one thousand nine
3 hundred eighty, shall be paid the annuities which were ap-
4 proved by the retirement board.

5 Annuities approved by the board effective after June thirty,
6 one thousand nine hundred eighty, shall be computed as
7 provided herein.

8 Upon establishment of eligibility for a retirement allowance,
9 a member shall be granted an annuity which shall be the sum
10 of the following:

11 (a) Two percent of the member's average salary multi-
12 plied by his total service credit as a teacher. In this paragraph
13 "average salary" shall mean the average of the highest annual

14 salaries received by the member during any five years con-
15 tained within his last fifteen years of total service credit:
16 *Provided*, That the highest annual salary used in this calcula-
17 tion for certain members employed by the West Virginia board
18 of regents at institutions of higher education under its con-
19 trol shall be four thousand eight hundred dollars, as provided
20 by section fourteen-a of this article and chapter;

21 (b) The actuarial equivalent of the voluntary deposits of
22 the member in his individual account up to the time of his
23 retirement, with regular interest.

24 The disability annuities of all teachers retired for
25 disability shall be based upon a disability table prepared
26 by a competent actuary approved by the retirement board.

27 Upon the death of an annuitant who qualified for an an-
28 nuity as a surviving spouse or because of permanent disability,
29 the estate of the deceased or beneficiary designated for such
30 purpose, shall be paid the difference, if any, between the
31 member's contributions with regular interest thereon, and the
32 sum of the annuity payments.

33 All annuities shall be paid in twelve monthly payments.
34 In computing the monthly payments, fractions of a cent should
35 be deemed a cent. The monthly payments shall cease with the
36 payment for the month within which the beneficiary dies,
37 and shall begin with the payment for the month succeeding the
38 month within which the annuitant became eligible under this
39 article for the annuity granted; in no case, however, shall an
40 annuitant receive more than four monthly payments which are
41 retroactive after the board receives his application for annuity.

42 In case the retirement board receives data affecting the ap-
43 proved annuity of a retired teacher, the annuity shall be
44 changed in accordance with the data, the change being effec-
45 tive with the payment for the month within which the board
46 received the new data.

47 Any person who has attained the age of sixty-five and
48 who has served at least twenty-five years as a teacher prior
49 to July one, one thousand nine hundred forty-one, shall be

50 eligible for prior service credit and for prior service pensions
51 as prescribed in this section.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of
2 less than six thousand dollars annually on the effective date
3 of this section shall receive a supplemental benefit, prospec-
4 tively, under this section in any fiscal year for which the
5 Legislature provides by line item appropriation for the pay-
6 ment of such benefit: *Provided*, That the effective date of
7 retirement for such annuitant was prior to July first, one
8 thousand nine hundred seventy-six, and he had ten years or
9 more of credited service at the time of such retirement. Any
10 annuitant retired pursuant to the disability provisions of this
11 article shall be considered to have had ten years or more
12 of credited service at the time of such retirement.

13 Each such annuitant shall receive as his supplemental
14 benefit an increased annual amount which is the pro-
15 duct of the sum of fifteen dollars multiplied by his years
16 of credited service: *Provided*, That the total annuity of any
17 annuitant affected by the provisions of this section, together
18 with any of the other provisions of this article, shall not
19 exceed six thousand dollars annually.

20 For the purpose of calculating the supplemental benefit
21 provided in this section, fractional parts of a service credit
22 year are to be disregarded unless in excess of one half of a
23 credited service year, in which event the same shall constitute
24 a full year of service credit.

**§18-7A-28. Options to beneficiaries; change of certain options be-
cause of divorce or annulment; limitation on re-
calculated monthly benefits.**

1 The retirement board is hereby authorized to offer plans,
2 optional with the beneficiary, for the payment of allowances
3 due such beneficiary for retirement, withdrawal or prior
4 service pensions under the retirement system. No plans shall
5 be offered, however, which are not approved by competent
6 actuaries.

7 When a beneficiary and his spouse have been approved for
8 a retirement plan which provides for them a joint life annuity,
9 and their marriage is subsequently dissolved, the board shall
10 permit such beneficiary to convert to the maximum life an-
11 nuity plan approved by the board: *Provided*, That the benefi-
12 ciary shall furnish to the board proof of entry of a final decree
13 of divorce or annulment: *Provided, however*, That a benefi-
14 ciary who qualifies for the change of retirement plans af-
15 farded by this section shall be permitted only one such change:
16 *Provided further*, That the recalculated monthly benefits, in-
17 dependently of increases granted by law after the beneficiary's
18 retirement, shall not exceed the monthly benefits which would
19 have been applicable under the maximum life annuity plan
20 at the time the beneficiary retired; and with such recalcula-
21 tion to be effective on the first day of the month following
22 submission to the board by the beneficiary of proof of entry of
23 a final decree of divorce or annulment.

§18-7A-34. Loans to members.

1 A member of the retirement system upon written applica-
2 tion may borrow from his individual account in the teachers
3 accumulation fund, subject to these restrictions:

4 (1) Loans shall be made in multiples of ten dollars, the
5 minimal loan being one hundred dollars and the maximum
6 being three thousand dollars.

7 (2) Loans to any one member shall not exceed one half of
8 his contributions to his individual account in the teachers
9 accumulation fund.

10 (3) Interest charged on the amount of the loan shall be
11 six percent per annum, or a higher rate as set by the teachers
12 retirement board. If repayable in installments, the interest
13 shall not exceed the annual rate so established upon the
14 principal amount of the loan, for the entire period of the
15 loan, and such charge shall be added to the principal amount
16 of the loan. The minimal interest charge shall be for six
17 months.

18 (4) No member shall be eligible for more than one loan
19 in any one year.

20 (5) If a refund or benefit is payable to the borrower or
21 his beneficiary before he repays the loan with interest, the
22 balance due with interest to date shall be deducted from
23 such benefit or refund.

24 (6) From his monthly salary as a teacher the member
25 shall pay the loan and interest by deductions which will pay
26 the loan and interest in not more than forty-eight nor less
27 than six months. Upon notice of loan granted and payment
28 due, the employer shall be responsible for making such
29 salary deductions and reporting them to the retirement
30 board. At the option of the retirement board, loan de-
31 ductions may be collected as prescribed herein for the
32 collection of members' contribution, or may be collected
33 through issuance of warrant by employer. If the borrower
34 decides to make loan payments while not paid for service as
35 a teacher, the retirement board must accept such payments.

CHAPTER 47

(S. B. 312—By Mr. Tonkovich)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to include approved three-year registered nurse diploma programs which are offered at nonprofit West Virginia hospitals as programs in which recipients of state scholarship awards may participate.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 22B. STATE SCHOLARSHIP PROGRAM.**§18-22B-5. Eligibility for a scholarship.**

1 A person shall be eligible for consideration for a
2 scholarship if:

3 (1) He is a citizen of the United States;

4 (2) He has been a resident of the state for one year
5 immediately preceding the date of his application for a
6 scholarship or a renewal of a scholarship;

7 (3) He meets the admission requirements of the
8 approved institution of higher education of his choice,
9 or meets the admission requirements of a three-year
10 registered nurse diploma program which is offered by a
11 nonprofit West Virginia hospital and approved by the
12 West Virginia board of examiners for registered profes-
13 sional nurses;

14 (4) He satisfactorily meets the qualifications of
15 financial need, character and academic promise, as well
16 as academic achievement, as established by the board
17 of regents.

**§18-22B-6. Recipients, awards and distribution of awards of
scholarships; authority of board of regents to
enter into reciprocal agreements with other
states concerning scholarships.**

1 The scholarship recipient shall be free to attend any
2 approved institution of higher education in this state
3 or any three-year registered nurse diploma program
4 which is approved by the West Virginia board of ex-
5 aminers for registered professional nurses and which is
6 offered at a nonprofit West Virginia hospital.

7 The institution is not required to accept the scholar-
8 ship recipient for enrollment, but is free to exact com-
9 pliance with its own admission requirements, standards
10 and policies.

11 Scholarship grants shall only be made to under-
12 graduate students and to students enrolled in approved
13 three-year registered nurse diploma programs, as pro-
14 vided in this article.

15 Each scholarship is renewable until the course of study
16 is completed, but not to exceed an additional three aca-
17 demic years beyond the first year of the award. These
18 may not necessarily be consecutive years and the scholar-
19 ship will be terminated if the student receives his degree
20 in a shorter period of time. Qualifications for renewal will
21 include maintaining satisfactory academic standing, mak-
22 ing normal progress toward completion of the course of
23 study and continued eligibility, as determined by the
24 board of regents.

25 Scholarship awards shall be made without regard to
26 the applicant's race, creed, color, sex, national origin or
27 ancestry; and in making scholarship awards, the board
28 of regents shall treat all approved institutions of higher
29 education in a fair and equitable manner. The board of
30 regents from time to time shall identify areas of pro-
31 fessional, vocational and technical expertise that are, or
32 will be, of critical need in this state and, to the extent
33 feasible, may direct scholarship grants to students that
34 are pursuing instruction in those areas.

35 The board of regents may enter into reciprocal agree-
36 ments with state scholarship and grant program agencies
37 in other states which provide financial assistance to their
38 residents attending institutions of higher education
39 located in West Virginia. In connection therewith, the
40 board of regents may authorize residents of West Virginia
41 to use financial assistance under this article to attend
42 institutions of higher education in such other states.
43 Residents of West Virginia requesting financial assistance
44 to attend institutions of higher education located in any
45 such states must meet all of the eligibility standards
46 set forth in section five of this article.

47 Scholarship awards shall be limited to the lesser of the
48 payment of tuition and those related compulsory fees
49 charged by an institution to all West Virginia under-
50 graduate students, or an amount equal to the average
51 state general fund support for each full-time equivalent
52 student in the state four-year colleges for the preceding
53 academic year as calculated by the board of regents.

54 Payments of scholarships shall be made directly to the
55 institution.

56 In the event that a scholarship recipient transfers from
57 one approved institution of higher education or approved
58 three-year registered nurse diploma program, to another
59 approved institution of higher education or approved
60 three-year registered nurse diploma program, his scholar-
61 ship shall be transferable only with the approval of the
62 board of regents.

63 Should the recipient terminate his enrollment for any
64 reason during the academic year, the unused portion of
65 the scholarship shall be returned to the board of regents
66 by the institution according to the institution's own
67 policy for issuing refunds.

CHAPTER 48

(S. B. 90—By Mr. Hamilton, Mr. Nelson, Mr. Susman and Mr. McGraw)

[Passed March 3, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, providing duty-free lunch periods for teachers, and permitting teachers to waive such right under certain conditions.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-14. Duty-free lunch period for teachers.

1 (1) Notwithstanding the provisions of section seven,
2 article two of this chapter, every public schoolteacher

3 shall be provided a daily lunch recess of not less than
4 thirty consecutive minutes, and no teacher shall be as-
5 signed any responsibilities during this recess.

6 (2) Nothing in this section shall be construed to prevent
7 any teacher from exchanging his right to a lunch recess
8 for any compensation or benefit mutually agreed upon by
9 that teacher and the county superintendent of schools
10 or his agent: *Provided*, That the parties may not agree to
11 terms which are different from those available to any
12 other teacher within the individual school or in any way
13 discriminate among teachers within the individual school.

CHAPTER 49

(H. B. 960—By Mr. Shepherd)

[Passed February 14, 1980; in effect from passage. Approved by the Governor.]

AN ACT to repeal section ten, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, ten and forty-four, article one; section ten, article four; sections five, nine and twenty-one, article five; section two, article six; and sections five and nine, article eight, all of said chapter three, all relating to elections generally; moving the time for election of party executive committee members to the primary election in the year one thousand nine hundred eighty-two; creation of executive committee districts; changing the numerical limits on such districts; allowing such districts to cross magisterial district lines; extending executive committees as presently composed until the primary election in the year one thousand nine hundred eighty-two; increasing compensation and expense allowance for election commissioners and poll clerks; lowering to thirty days prior to the election the time in which ballot labels for use in voting machine counties are to be delivered to the clerk of the county commission; setting specifications for such ballot labels; requiring the printing of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot;

requiring election commissioners to provide all other necessary equipment for the conduct of the election; changing the time for filing for county boards of education by extending such filing time to not later than the last Saturday in March preceding the election in the year one thousand nine hundred eighty and each two years thereafter; extending to forty days prior to the election day the time in which the secretary of state shall transmit to the clerk of the circuit courts certificates of information; requiring party conventions for nomination of presidential electors be held anytime during the month of August preceding any general election; providing for specifications of general election ballots; providing for rotation of names of candidates for certain offices on said ballots and the manner of such rotation; requiring filing of detailed financial statements of election expenses; specifying the general contents of such financial statements; changing the time of filing such financial statements to the last Saturday in March or within fifteen days thereafter next preceding the primary election day; stipulating that any earlier filing will not be considered compliance; requiring filing of an additional financial statement within thirty days after the primary or other election; specifying lawful election expenses; authorizing secretarial and other reasonable office expenses for candidates who do not maintain a political headquarters; allowing expenses for rent, maintenance, and furnishing of offices to be used as political headquarters; authorizing expenses for conducting public opinion poll or polls; defining public opinion polls and limiting their use; the use of advertising agency services for election purposes and limiting such services to those specifically delineated; prohibiting such agencies from conveying or engaging others to convey voters to and from polls; requiring liabilities incurred to be reasonable, proper and fairly commensurate with services rendered; requiring filing of election expenses by candidates, financial agents, committees and advertising agencies; and allowing a candidate to designate a financial agent.

Be it enacted by the Legislature of West Virginia:

That section ten, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine, ten and forty-four, article one; section

ten, article four; sections five, nine and twenty-one, article five; section two, article six; and sections five and nine, article eight, all of said chapter three, be amended and reenacted, all to read as follows:

Article

1. **General Provisions and Definitions.**
4. **Voting Machines.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**
8. **Regulation and Control of Elections.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

§3-1-10. Party committees in office.

§3-1-44. Compensation of election officials; expenses.

§3-1-9. Political party committees; how composed; organization.

1 At the June primary election in the year one thousand nine
2 hundred eighty-two, and in every fourth year thereafter, the
3 voters of each political party in each senatorial district shall
4 elect two male and two female members of the state executive
5 committee of the party. In senatorial districts containing two
6 or more counties, not more than two such elected committee
7 members shall be residents of the same county. The com-
8 mittee, when convened and organized as herein provided, shall
9 appoint three additional members of the committee from the
10 state at large.

11 At such primary election, the voters of each political party in
12 each county shall elect one male and one female member
13 of the party's executive committee of the congressional district,
14 of the senatorial district in which such county is situated
15 and of the delegate district in which such county is situated
16 if such county be situated in a delegate district. At the same
17 time such voters in each magisterial district or executive
18 committee district, as the case may be, of the county shall elect
19 one male and one female member of the party's county execu-
20 tive committee.

21 For the purpose of complying with the provisions of this
22 section the county commission shall create such executive
23 committee districts as they shall determine, which such dis-

24 tricts shall not be fewer than the number of magisterial districts
25 in such counties nor shall they exceed in number the following:
26 Forty for counties having a population of one hundred thou-
27 sand persons or more; thirty for counties having a population
28 of fifty thousand to one hundred thousand; twenty for counties
29 having a population of twenty thousand to fifty thousand; and
30 such districts in counties having a population of less than
31 twenty thousand persons shall be coextensive with the
32 magisterial districts.

33 The executive committee districts shall be as nearly equal in
34 population as practicable, and shall each be composed of
35 compact, contiguous territory. The county commissions shall
36 constitute the executive committee district to be effective for
37 the term of office of executive committee members elected
38 at the one thousand nine hundred eighty-two primary election
39 and thereafter. Executive committees as presently composed
40 shall continue until after their successors are elected and quali-
41 fied following the primary election of one thousand nine
42 hundred eighty-two. The county commissions shall change
43 the territorial boundaries of such districts as necessary, only
44 if there is an increase or decrease in the population of such
45 districts as determined by a decennial census and such changes
46 must be made within two years following such census.

47 All members of executive committees, selected for each
48 political division as herein provided, shall reside within the
49 county or district from which chosen. The term of office of
50 all members of executive committees elected at the June
51 primary in the year one thousand nine hundred eighty-two,
52 shall begin on the first day of July, following said June
53 primary, and shall continue for four years thereafter and until
54 their successors are elected and qualified. Vacancies in the
55 state executive committee shall be filled by the members of
56 the committee for the unexpired term. Vacancies in the party's
57 executive committee of a congressional district, senatorial dis-
58 trict, delegate district or county shall be filled by the party's
59 executive committee of the county in which such vacancy
60 exists, and shall be for the unexpired term.

61 As soon as possible after the first day of July, following
62 the election of the new executive committees, as herein pro-

63 vided, they shall convene within their respective political
64 divisions, on the call of the chairman of corresponding out-
65 going executive committees, or by any member of the new
66 executive committee in the event there is no corresponding
67 outgoing executive committee, and proceed to select a chair-
68 man, a treasurer, and a secretary, and such other officers as
69 they may desire, each of which officers shall for their respec-
70 tive committees perform the duties that usually appertain to
71 such offices.

§3-1-10. Party committees in office.

1 The members of all state, congressional, senatorial, and
2 county executive committees for political parties in office at
3 the time this section becomes effective, and the various offi-
4 cers of such committees, shall hold their several offices and dis-
5 charge the duties thereof until their successors are chosen and
6 installed in accordance with the provisions of section nine of
7 this article effective simultaneously herewith and other appli-
8 cable provisions of this article, the prior provisions of section
9 nine having become effective after the election of such mem-
10 bers and officers for terms ending in the year one thousand
11 nine hundred eighty-two. The Legislature finds and declares
12 that the prior provisions of section nine of this article should
13 not operate to limit the terms of such members and officers
14 before the expiration thereof as contemplated by law effec-
15 tive at the time of the primary election held May, one thou-
16 sand nine hundred seventy-eight.

§3-1-44. Compensation of election officials; expenses.

1 Each ballot commissioner shall be allowed and paid a sum,
2 to be fixed by the county commission, not exceeding twenty-
3 five dollars for each day he shall serve as such, but in no case
4 shall a ballot commissioner receive allowance for more than
5 ten days' services for any one primary, general or special
6 election. Each commissioner of election and poll clerk shall be
7 allowed and paid a sum, to be fixed by the county commission,
8 not exceeding twenty-five dollars for one day's services for
9 attending the school of instruction for election officials and a
10 sum not exceeding fifty dollars for his services at any one

11 election: *Provided*, That each commissioner of election and
12 poll clerk shall be paid and allowed a sum not exceeding
13 twenty-five dollars for his services at any of the three special
14 elections hereinafter specified and described. The commission-
15 ers of election obtaining and delivering the election supplies, as
16 provided in section twenty-four of this article, and returning
17 them as provided in articles five and six of this chapter, shall
18 be allowed and paid an additional sum, likewise fixed by the
19 county commission, not exceeding twenty-five dollars for all
20 such services at any one election and, in addition, shall be
21 allowed and paid mileage at the rate of seventeen cents per
22 mile necessarily traveled in the performance of such services.
23 The compensation of election officers, cost of printing ballots,
24 and all other expenses incurred in holding and making the re-
25 turn of elections, other than the three special elections herein-
26 after specified and described, shall be audited by the county
27 commission and paid out of the county treasury.

28 The compensation of election officers, cost of printing bal-
29 lots, and all other reasonable and necessary expenses in holding
30 and making the return of a special election for the purpose of
31 taking the sense of the voters on the question of calling a
32 constitutional convention, of a special election to elect members
33 of a constitutional convention, and of a special election
34 to ratify or reject the proposals, acts and ordinances of a con-
35 stitutional convention shall be obligations of the state incurred
36 by the ballot commissioners, clerks of the circuit courts, clerks
37 of the county commissions, and county commissions of the
38 various counties as agents of the state, and all such expenses
39 shall be audited by the secretary of state. The secretary of
40 state shall prepare and transmit to the county commissions
41 forms on which the county commissions shall certify all such
42 expenses of such special elections to the secretary of state. If
43 satisfied that such expenses as certified by the county com-
44 missions are reasonable and were necessarily incurred, the
45 secretary of state shall requisition the necessary warrants from
46 the auditor of the state to be drawn on the state treasurer,
47 and shall mail such warrants directly to the vendors of such
48 special election services, supplies and facilities.

ARTICLE 4. VOTING MACHINES.**§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.**

1 The ballot commissioners of any county in which voting
2 machines are to be used in any election shall cause to be
3 printed for use in such election the ballot labels for the voting
4 machines. The ballot labels so printed shall total in number
5 one and one-half times the total number of voting machines to
6 be used in the several precincts of the county in such election.
7 All such labels shall be delivered to the clerk of the county
8 commission at least thirty days prior to the day of the election
9 in which such labels are to be used. The labels shall contain
10 the name of each candidate and each question to be voted
11 upon and shall be clearly printed or typed in black ink on
12 clear white material of such size as will fit the ballot frames.
13 One set of ballot labels shall be inserted in the machine prior
14 to the delivery of the machine to the polling place. The re-
15 mainder of such ballot labels for each machine shall be re-
16 tained by the clerk of the county commission for use in the
17 event the set so inserted in a machine becomes lost, mutilated
18 or damaged.

19 If a nomination to fill a vacancy be made by a political
20 committee or the chairman thereof and be certified to the
21 ballot commissioners after the ballot labels to be used at the
22 ensuing election shall have been printed, it shall be lawful
23 for the chairman of the party executive committee for the
24 political division to provide, or cause to be provided, and
25 deliver, or cause to be delivered, to the clerk, a sufficient
26 number of ballot labels containing the name of such candi-
27 date. Such ballot labels shall conform to the specification as
28 set forth herein. If such ballot labels are furnished to the clerk
29 of the county commission before the machines are delivered
30 to the election precincts, the clerk, with the advice and con-
31 sent of the ballot commissioners, shall cause such ballot labels
32 to be inserted in the proper ballot frames.

33 In addition to all other equipment and supplies required by
34 the provisions of this article, the ballot commissioners shall
35 cause to be printed a supply of instruction cards, sample

36 ballots, facsimile diagrams of the voting machine ballot and
 37 official printed ballots adequate for the orderly conduct of the
 38 election in each precinct in their county. In addition they
 39 shall provide all other materials and equipment necessary to
 40 the conduct of the election, including appropriate facilities
 41 for the reception and safekeeping of the ballots of absent
 42 voters and of challenged voters and of such "independent"
 43 voters who shall, in primary elections, cast their votes on
 44 nonpartisan candidates and public questions submitted to the
 45 voters.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-5. Candidates for county board of education.

§3-5-9. Certification and posting of candidacies.

§3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties.

§3-5-5. Candidates for county board of education.

1 Any person who is eligible to hold office as a member of
 2 a county board of education may file a certificate with the
 3 clerk of the circuit court of the county, declaring himself a
 4 candidate for election to such office. Such certificate shall be
 5 substantially in the following form:

6 I, _____, hereby certify that I am a candidate
 7 for nonpartisan election to membership on the _____
 8 County Board of Education, and desire my name printed on
 9 the ballot to be voted at the primary election to be held on
 10 the _____ day of _____, 19____; that
 11 I am a legally qualified voter of the County of _____,
 12 State of West Virginia; that the address of my residence in
 13 _____ County is _____;
 14 that I am eligible to hold the office; and that I am a candidate
 15 therefor in good faith.

16 _____
 17 Candidate

18 Signed and acknowledged before me this _____ day of
 19 _____, 19_____.

20 _____
 21 Signature and official title
 22 of certifying officer.

23 Such announcement shall be signed and acknowledged by
24 the candidate before some officer qualified to administer oaths,
25 who shall certify the same.

26 In the year one thousand nine hundred eighty, notwith-
27 standing the expiration of the time of filing certificates of
28 candidacy for the office of member of the county board of
29 education, such certificates of candidacy may be filed not
30 later than the last Saturday in March next preceding the pri-
31 mary election day and must be received by the clerk before
32 midnight, eastern standard time, of that day, or, if mailed, shall
33 be postmarked before that hour.

34 In the year one thousand nine hundred eighty-two, and each
35 two years thereafter, such certificate shall be filed with the
36 clerk of the circuit court not earlier than the last Monday in
37 February next preceding the primary election day and not
38 later than the last Saturday of March next preceding the
39 primary election day and must be received by the clerk be-
40 fore midnight, eastern standard time, of that day, or, if mailed,
41 shall be postmarked before that hour.

§3-5-9. Certification and posting of candidacies.

1 During the week next following the last Saturday of March
2 next preceding the day fixed for the primary election, the
3 secretary of state shall arrange the names of all candidates,
4 who have filed announcements with him, as provided in this
5 article, and who are entitled to have their names printed on
6 any political party ballot, in accordance with the provisions
7 of this chapter, and shall forthwith certify the same under his
8 name and the lesser seal of the state, and file the same in his
9 office.

10 Such certificate of candidates shall allow (1) the name and
11 residence of each candidate, (2) the office for which he is a
12 candidate, (3) the name of the political party of which he is
13 a candidate, (4) upon what ballot his name is to be printed,
14 and (5) in the case of a candidate for delegate to the national
15 convention of any political party, the name of the person the
16 candidate prefers as the presidential nominee of his party, or
17 if he has no preference, the word "uncommitted."

18 The secretary of state shall post a duplicate of such cer-
19 tificate in a conspicuous place in his office and keep same
20 posted until after the primary election.

21 Immediately upon completion of such certification, the
22 secretary of state shall ascertain therefrom the candidates
23 whose names are to appear on the primary election ballots
24 in the several counties of the state and shall certify to the
25 clerk of the circuit court in each county the certificate informa-
26 tion relating to each of the candidates whose names are to
27 appear on the ballot in such county. He shall transmit such
28 certificate to the several clerks by registered or certified
29 mail, but, in emergency cases, he may resort to other reliable
30 and speedy means of transmission which may be available so
31 that such certificates shall reach the several clerks by the
32 fortieth day next preceding such primary election day.

33 The provisions of this section shall apply to the primary
34 election held in the year one thousand nine hundred eighty
35 and every primary election held thereafter.

**§3-5-21. Party conventions to nominate presidential electors; candi-
dates; organization; duties.**

1 Candidates for presidential electors shall be nominated by
2 the delegated representatives of the political party assembled
3 in a state convention to be held during the month of August
4 next preceding any general election at which presidential
5 electors are to be elected. The state executive committee of
6 the political party, by resolution, shall designate the place and
7 fix the date of such convention, shall prescribe the number
8 of delegates thereto, and shall apportion the delegates among
9 the several counties of the state in proportion to the vote cast
10 in the state for the party's candidate for governor at the last
11 preceding general election at which a governor was elected.
12 The state executive committee shall also ascertain and desig-
13 nate all offices for which candidates are to be nominated at
14 such convention.

15 At least sixty days prior to the date fixed for holding any
16 state convention, the chairman of the party's state executive
17 committee shall cause to be delivered to the party's county
18 executive committee in each county of the state a copy of the

19 resolutions fixing the time and place of holding the state con-
20 vention and prescribing the number of delegates from each
21 county to the convention. Within ten days after receipt of the
22 copy of such resolutions, the party executive committee of
23 each county shall meet and, by resolution, shall apportion the
24 delegates to the state convention among the several magisterial
25 districts of the county, on a basis of the vote received in the
26 county by the candidate of the party for governor at the last
27 preceding general election at which a governor was elected, but
28 in such apportionment of county delegates each magisterial
29 district shall be entitled to at least one delegate to such state
30 convention. The party's county executive committee shall call
31 a meeting of the members of the political party in mass con-
32 vention in the several magisterial districts of the county, which
33 district meeting shall be held at least thirty days prior to the
34 date fixed for the state convention and at which meeting the
35 members of the political party in each magisterial district
36 shall elect the number of delegates to which such district is
37 entitled in the state convention.

38 The meeting place in the magisterial district shall be as
39 central and convenient as can reasonably be selected, and all
40 recognized members of the political party shall be entitled to
41 participate in any such mass convention and in the selection of
42 delegates. Notice of the time and place of holding the several
43 magisterial district mass conventions and of the person who
44 shall act as temporary chairman thereof shall be given by
45 publication as a Class II-O legal advertisement in compliance
46 with the provisions of article three, chapter fifty-nine of this
47 code, and the publication area for such publication shall be
48 the county. The first publication shall be made not more than
49 fifteen days and the second publication shall be made not
50 less than five days prior to the date fixed for holding the con-
51 vention. The notice published shall specify the number of
52 delegates which each magisterial district in the county is
53 entitled to elect to the state convention.

54 Upon assembling, the mass convention of each magisterial
55 district shall choose a chairman and a secretary, who, within
56 five days after the holding of such convention, shall certify to
57 the chairman of the state executive committee of the political

58 party and the chairman of the county committee of the political
59 party, the names and addresses of the parties selected as dele-
60 gates to the state convention.

61 All contests over the selection of delegates to conventions
62 shall be heard and determined by the party executive com-
63 mittee of the county from which the delegates are chosen, and
64 such county executive committee shall, upon written petition
65 of any contest, meet for such hearings and determinations
66 within ten days after the holding of such magisterial district
67 mass convention. The circuit court of the county and the
68 supreme court of appeals of the state shall have concurrent
69 original jurisdiction to review, by mandamus or other proper
70 proceeding, the decision of a county executive committee in
71 any contest.

72 The delegates chosen and certified by and from the several
73 magisterial districts in the state, and, in the event of any con-
74 test, those prevailing in the contest, shall make up the state
75 convention. The number present of those entitled to partici-
76 pate in any convention shall cast the entire vote to which the
77 county is entitled in such convention, and it shall require a
78 majority vote to nominate any candidate for office.

79 All nominations made at state conventions shall be certified
80 within fifteen days thereafter, by the chairman and the secretary
81 of the convention, to the secretary of state, who shall certify
82 them to the clerk of the circuit court of each county concerned,
83 and the names of the persons so nominated shall be printed
84 upon the regular ballot to be voted at the ensuing general
85 election, except that the names of the presidential elector
86 candidates shall not be printed thereon.

87 The delegates to any state convention may formulate and
88 promulgate such party platform or declaration of party prin-
89 ciples as to them shall seem advisable.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 All ballots prepared under the provisions of this article
2 shall be printed in black ink on number two white book
3 paper sufficiently thick so that the printing cannot be dis-




4 tingushed from the back, and shall contain the names of
5 every candidate whose nomination for any office to be voted
6 for at the election has been certified and filed according to
7 law, and no others, except that if it shall appear to the satisfac-
8 tion of the ballot commissioners that a person has been
9 legally nominated as a candidate for an office and is lawfully
10 entitled to have his name upon the ballot and no certificate
11 of the nomination has been received by the clerk of the circuit
12 court, they shall print the name of such candidate upon the
13 ballot in its proper place.

14 The tickets, except the heading, which shall be in display
15 type, shall be printed in eight point type; the name or
16 designation of the office and the residence of the candidate
17 in lowercase letters, and the name of the candidate in
18 capital letters. The name and residence of the candidate may
19 be printed in the same line. The name of each candidate
20 shall be printed in a space defined by ruled lines, and with
21 a black square on its left enclosed by heavy dark lines. If,
22 upon any ticket, there be no candidate or candidates for
23 a designated office, a blank space equal to the space that
24 would be occupied by such name or names, if they were
25 printed thereon, with the blank space herein provided for,
26 shall be left. The heading of each party ticket including
27 the name of the party and the device or emblem above and
28 the large circle between the device or emblem and such
29 name, shall be separated from the rest of the ticket by heavy
30 lines and the circle above the name of the party in which the
31 voter is to place the cross mark, if he desires to vote the
32 straight ticket, shall be defined by heavier lines than the
33 lines defining the blank spaces before the names of candidates,
34 and such circle shall be surrounded by the following words
35 printed in heavy face six point type: "For a straight ticket
36 mark within this circle." Each party ticket shall be separated
37 from other party tickets and bordered on either side by a
38 heavy border, or a broad solid line, at least one sixteenth of
39 an inch wide, and the edges of the ballot on either side trimmed
40 off to within one-half inch of the border or solid line described.

41 The names of the candidates shall be arranged on the
42 ballot in tickets or lists, in separate columns under the

43 respective party or political or other designation certified,
44 each column or ticket containing the names of candidates
45 nominated by the same political party and no others. In
46 elections for presidential electors, the names of candidates
47 for electors of any political party or group of petitioners,
48 shall not be placed on the ballot, but shall, after nomina-
49 tion, be filed with the secretary of state. In place of their
50 names, there shall be printed first on the ballots the names
51 of the candidates for president and vice president, respectively,
52 of each such party or group of petitioners, and they shall be
53 arranged under the title of the office. Before the names of
54 such candidates for president and vice president of each party,
55 or group, a single square shall be printed, in front of a brace,
56 in which the voter shall place the cross mark for the candidate
57 of his choice for such offices. A vote for any of such can-
58 didates shall be a vote for the electors of the party by which
59 such candidates were named, and whose names have been
60 filed with the secretary of state.

61 The names of the candidates on each ticket shall be arranged
62 in groups, with a heading over each group printed in heavy
63 faced eight point type to indicate the political divisions in
64 which such group is to be voted for. The arrangement of the
65 ballot shall conform as nearly as practicable to the plan here
66 given:

Device	Device	Device
		
Republican Ticket	Democratic Ticket	Prohibition Ticket
For Governor	For Governor	For Governor
Name	Name	Name
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

67 The tickets of the several political parties shall be printed
68 on the ballot in parallel columns, each ticket in a separate
69 column headed by the chosen device, and the tickets in such
70 order on the ballot and the names of the office in such order
71 on the ticket as the secretary of state shall direct, preference,
72 however, being given to the political party which cast the high-
73 est number of votes for the head of the ticket at the last pre-
74 ceding presidential election, and so on. No ticket or list of

75 candidates shall be printed under the name of any party con-
76 taining more candidates for any office than are to be elected.

77 The ballot shall be so printed as to give each voter a clear
78 opportunity to designate by a cross mark in a large, blank,
79 circular space, three quarters of an inch in diameter, below
80 the device and above the name of the party at the head of the
81 ticket or list of candidates, his choice of a party ticket and
82 desire to vote for each and every candidate thereon; and by a
83 cross mark, in a blank, enclosed space on the left side and
84 before the name of each candidate, his choice of particular
85 candidates.

86 For any office or offices for which there is to be more than
87 one candidate elected, that section of the ballot relating to said
88 office shall be printed in such a manner so as to provide for the
89 rotation of names in order to assure that each candidate from
90 each party for said office is opposite the name of each can-
91 didate for said office from the other party or parties on the
92 ballot an equal number of times. If any party fails to nomin-
93 ate or to fill a ballot vacancy for as many candidates as there
94 are persons to be elected to said office, then the ballot shall
95 be printed in such a manner so as to provide that the space
96 created by the vacancy shall be opposite the names of each
97 of the candidates for said office from the other party or parties
98 an equal number of times.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified statements required.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

§3-8-5. Detailed accounts and verified financial statements required.

1 Every candidate, financial agent, person and association of
2 persons, organization of any kind, including every corpora-
3 tion, directly or indirectly, supporting a political committee
4 established pursuant to paragraph (C), subdivision (1), sub-
5 section (b), section eight of this article or engaging in other
6 activities permitted by said section eight of this article and also
7 including the treasurer or equivalent officer of such association

8 or organization, advocating or opposing the nomination, elec-
9 tion or defeat of any candidate, or the passage or defeat of any
10 issue, thing or item to be voted upon, and the treasurer of
11 every political party committee shall keep detailed accounts
12 of every sum of money or other thing of value received by
13 him, and of all expenditures and disbursements made, liabil-
14 ities incurred, by such candidate, financial agent, person,
15 association or organization or committee, for political pur-
16 poses, or by any of the officers or members of such com-
17 mittee, or any person acting under its authority or on its be-
18 half.

19 Each person who files a certificate of candidacy for nomi-
20 nation or election in this state as provided for in article five
21 of this chapter and every financial agent, person, the treasurer
22 or equivalent officer of any association or organization of any
23 kind supporting or opposing the candidacy of any such candi-
24 date, or any person or organization advocating or opposing
25 the nomination, election or defeat of any candidate, or the
26 passage or defeat of any issue, thing or item to be voted upon,
27 shall file, on the last Saturday in March or within fifteen days
28 thereafter next preceding the primary election day, a detailed
29 itemized statement, subscribed and sworn to before an officer
30 authorized to administer oaths, setting forth all contributions
31 and expenditures concerning the candidacy of that person or
32 any person or organization advocating or opposing the nomi-
33 nation, election or defeat of any candidate, or the passage
34 or defeat of any issue, thing or item to be voted upon:
35 *Provided*, That any candidate for the office of member of the
36 county board of education in the year one thousand nine
37 hundred eighty, who shall have filed such detailed itemized
38 statement prior to the last Saturday in March of that year
39 shall be deemed to have complied with the filing requirements
40 of this paragraph in that year. Such statement shall include
41 all contributions received or expenditures made which have
42 taken place by the date of such report, subsequent to any
43 previous report filed within the previous five years under this
44 section or under the former provisions of this section, or if
45 no report was filed, all contributions received or expenditures
46 made within the preceding five years. The specific informa-

47 tion required to be included in such statement is provided for
48 in section five-a of this article.

49 Not less than five nor more than ten days before each pri-
50 mary or other election, and again within thirty days after each
51 primary or other election, every candidate for nomination or
52 election, and every financial agent, person, the treasurer or
53 equivalent officer of any association or organization of any
54 kind advocating or opposing the passage or defeat of any
55 issue, thing or item to be voted upon or pertaining to the hold-
56 ing or conducting of any election, and the treasurer of every
57 political party committee shall file with the officers hereinafter
58 prescribed a detailed itemized financial statement subscribed
59 and sworn to before an officer authorized to administer oaths,
60 setting forth all financial transactions which have taken place
61 by the date of such report in connection with such primary or
62 other election as provided for in section five-a of this article.

63 Every person who shall announce as a write-in candidate
64 for any elective office and his financial agent or election or-
65 ganization of any kind, shall comply with all of the require-
66 ments of this section after public announcement of such per-
67 son's candidacy has been made.

**§3-8-9. Lawful and unlawful election expenses; public opinion
polls and limiting their purposes; limitation upon ex-
penses; use of advertising agencies and reporting re-
quirements; delegation of expenditures.**

1 (a) No candidate, financial agent, or treasurer of a politi-
2 cal party committee, shall pay, give or lend, either directly
3 or indirectly, any money or other thing of value for any
4 election expenses, except for the following purposes:

5 (1) For rent, maintenance and furnishing of offices to be
6 used as political headquarters and for the payment of neces-
7 sary clerks, stenographers, typists, janitors and messengers
8 actually employed therein;

9 (2) In the case of a candidate who does not maintain a
10 headquarters, for reasonable office expenses and for the pay-
11 ment of necessary clerks, stenographers and typists, actually
12 employed;

13 (3) For printing and distributing books, pamphlets, circu-
14 lars and other printed matter and radio and television broad-
15 casting and painting, printing and posting signs, banners and
16 other advertisements, all relating to political issues and can-
17 didates;

18 (4) For renting and decorating halls for public meetings
19 and political conventions, for advertising public meetings, and
20 for the payment of traveling expenses of speakers and musi-
21 cians at such meetings;

22 (5) For the necessary traveling and hotel expenses of can-
23 didates, political agents and committees, and for stationery,
24 postage, telegrams, telephone, express, freight and public mes-
25 senger service;

26 (6) For preparing, circulating and filing petitions for nomi-
27 nation of candidates;

28 (7) For examining the lists of registered voters, securing
29 copies thereof, investigating the right to vote of the persons
30 listed therein, and conducting proceedings to prevent unlaw-
31 ful registration or voting;

32 (8) For conveying voters to and from the polls;

33 (9) For securing publication in newspapers and by radio
34 and television broadcasting of documents, articles, speeches,
35 arguments and any information relating to any political issue,
36 candidate, or question or proposition, submitted to a vote;

37 (10) For conducting public opinion poll or polls. For the
38 purpose of this section, the phrase "conducting of public
39 opinion poll or polls" shall mean and be limited to the gath-
40 ering, collection, collation, and evaluation of information re-
41 flecting public opinion, needs and preferences as to any
42 candidate, group of candidates, party, issue or issues. No such
43 poll shall be deceptively designed or intentionally conducted
44 in a manner calculated to advocate the election or defeat of
45 any candidate or group of candidates or calculated to influ-
46 ence any person or persons so polled to vote for or against
47 any candidate, group of candidates, proposition or other matter
48 to be voted on by the public at any election: *Provided*, That

49 nothing herein shall prevent the use of the results of any such
50 poll or polls to further, promote or enhance the election of
51 any candidate or group of candidates or the approval or defeat
52 of any proposition or other matter to be voted on by the
53 public at any election; and

54 (11) For legitimate advertising agency services, including
55 commissions, in connection with any campaign activity for
56 which payment is authorized by subdivisions three, four, five,
57 six, seven, nine and ten of this subsection.

58 (b) Every liability incurred and payment made shall be at
59 a rate and for a total amount which is proper and reasonable
60 and fairly commensurate with the services rendered.

61 (c) Every advertising agency subject to the provisions of this
62 article shall file, in the manner and form required by section
63 five-a of this article, the financial statements required by sec-
64 tion five of this article at the times required therein and in-
65 clude therein, in itemized detail, all receipts from and expendi-
66 tures made on behalf of a candidate, financial agent or trea-
67 surer of a political party committee.

68 (d) Any candidate may designate a financial agent by a
69 writing duly subscribed by him which shall be in such form
70 and filed in accordance with the provisions of section four of
71 this article.

CHAPTER 50

(H. B. 1556—By Mr. Speaker, Mr. See)

[Passed March 3, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a prohibition of candidates running for more than one office; exceptions to such prohibition; and providing for the continuation of joint county and circuit clerkships in existence as of the original effective date of this section.

Be it enacted by the Legislature of West Virginia:

That section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-47. Candidate not to run for more than one office; exceptions.

1 No person shall be a candidate for more than one office at
2 any election: *Provided*, That such candidate for an office may
3 also be a candidate for president or vice president of the United
4 States, for membership on a political party executive commit-
5 tee or for delegate to a political party national convention. Any
6 candidate who violates this section shall be disqualified from
7 serving in any office to which he was elected while in violation
8 of this section: *Provided, however*, That notwithstanding the
9 provisions of this section, nothing shall prohibit a candidate
10 from jointly running for or jointly holding the offices of county
11 clerk and circuit clerk in those counties which have heretofore
12 operated and maintained a joint clerkship system as of
13 January first, one thousand nine hundred seventy-eight.

CHAPTER 51

(H. B. 1613—By Mr. Albright)

[Passed February 25, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conduct and administration of elections generally; the preparation and form of the official ballot; providing for the words "official ballot" and space for the signature of poll clerks on the back of the official ballot.

Be it enacted by the Legislature of West Virginia:

That section two, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.




1 All ballots prepared under the provisions of this article
2 shall be printed in black ink on number two white book paper
3 sufficiently thick so that the printing cannot be distinguished
4 from the back, and shall contain the names of every candidate
5 whose nomination for any office to be voted for at the election
6 has been certified and filed according to law, and no others,
7 except that if it shall appear to the satisfaction of the ballot
8 commissioners that a person has been legally nominated as a
9 candidate for an office and is lawfully entitled to have his
10 name upon the ballot and no certificate of the nomination has
11 been received by the clerk of the circuit court, they shall
12 print the name of such candidate upon the ballot in its proper
13 place.

14 The tickets, except the heading, which shall be in dis-
15 play type, shall be printed in eight point type; the name or
16 designation of the office and the residence of the candidate
17 in lower case letters, and the name of the candidate in capital
18 letters. The name and residence of the candidate may be
19 printed in the same line. The name of each candidate shall
20 be printed in a space defined by ruled lines, and with a black
21 square on its left enclosed by heavy dark lines. If, upon any
22 ticket, there be no candidate or candidates for a designated
23 office, a blank space equal to the space that would be occu-
24 pied by such name or names, if they were printed thereon,
25 with the blank space herein provided for, shall be left. The
26 heading of each party ticket including the name of the party
27 and the device or emblem above and the large circle between
28 the device or emblem and such name, shall be separated from
29 the rest of the ticket by heavy lines and the circle above the

30 name of the party in which the voter is to place the cross
31 mark, if he desires to vote the straight ticket, shall be defined
32 by heavier lines than the lines defining the blank spaces before
33 the names of candidates, and such circle shall be surrounded
34 by the following words printed in heavy face six point type:
35 "For a straight ticket mark within this circle." Each party
36 ticket shall be separated from other party tickets and bordered
37 on either side by a heavy border, or a broad solid line, at least
38 one sixteenth of an inch wide, and the edges of the ballot on
39 either side trimmed off to within one-half inch of the border
40 or solid line described.

41 Then names of the candidates shall be arranged on the bal-
42 lot in tickets or lists, in separate columns under the respective
43 party or political or other designation certified, each column or
44 ticket containing the names of candidates nominated by the
45 same political party and no others. In elections for presidential
46 electors, the names of candidates for electors of any political
47 party or group of petitioners, shall not be placed on the ballot,
48 but shall, after nomination, be filed with the secretary of state.
49 In place of their names, there shall be printed first on the
50 ballots the names of the candidates for president and vice
51 president, respectively, of each such party or group of peti-
52 tioners, and they shall be arranged under the title of the office.
53 Before the names of such candidates for president and vice
54 president of each party, or group, a single square shall be
55 printed, in front of a brace in which the voter shall place the
56 cross mark for the candidate of his choice for such offices. A
57 vote for any of such candidates shall be a vote for the electors
58 of the party by which such candidates were named, and whose
59 names have been filed with the secretary of state.

60 The names of the candidates on each ticket shall be arranged
61 in groups, with a heading over each group printed in heavy
62 faced eight point type to indicate the political divisions in
63 which such group is to be voted for. The arrangement of the
64 ballot shall conform as nearly as practicable to the plan here
65 given:

Device	Device	Device
		
Republican Ticket	Democratic Ticket	Prohibition Ticket
For Governor	For Governor	For Governor
Name	Name	Name
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

66 The tickets of the several political parties shall be printed
 67 on the ballot in parallel columns, each ticket in a separate
 68 column headed by the chosen device, and the tickets in such
 69 order on the ballot and the names of the office in such
 70 order on the ticket as the secretary of state shall direct, pre-
 71 ference, however, being given to the political party which cast
 72 the highest number of votes for the head of the ticket at the
 73 last preceding presidential election, and so on. No ticket or
 74 list of candidates shall be printed under the name of any party

75 containing more candidates for any office than are to be
76 elected.

77 The ballot shall be so printed as to give each voter a clear
78 opportunity to designate by a cross mark in a large, blank,
79 circular space, three quarters of an inch in diameter, below
80 the device and above the name of the party at the head of the
81 ticket or list of candidates, his choice of a party ticket and
82 desire to vote for each and every candidate thereon; and by a
83 cross mark, in a blank, enclosed space on the left side and
84 before the name of each candidate, his choice of particular
85 candidates.

86 For any office or offices for which there is to be more
87 than one candidate elected, that section of the ballot relating
88 to said office shall be printed in such a manner so as to pro-
89 vide for the rotation of names in order to assure that each
90 candidate from each party for said office is opposite the name
91 of each candidate for said office from the other party or par-
92 ties on the ballot an equal number of times. If any party fails
93 to nominate or to fill a ballot vacancy for as many candidates
94 as there are persons to be elected to said office, then the
95 ballot shall be printed in such a manner so as to provide that
96 the space created by the vacancy shall be opposite the names
97 of each of the candidates for said office from the other party
98 or parties an equal number of times.

99 On the back of the ballot shall be printed or stamped in
100 black ink the words "Official Ballot," with the date of the
101 election and underneath shall be two blank lines, followed by
102 the words "Poll Clerks."

CHAPTER 52

(Com. Sub. for H. B. 1639—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect January 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, relating to increasing the salaries of certain state elective officers.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

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

1 Effective on and after the first Monday after the second
2 Wednesday in January, one thousand nine hundred eighty-one,
3 the salary of the governor shall be sixty thousand dollars per
4 year.

5 The salary of the attorney general shall be forty-two
6 thousand dollars per year; the salary of the auditor shall be
7 thirty-nine thousand dollars per year; the salary of the secre-
8 tary of state shall be thirty-six thousand dollars per year;
9 the salary of the commissioner of agriculture shall be thirty-
10 nine thousand dollars per year; and the salary of the state
11 treasurer shall be forty-two thousand dollars per year.

CHAPTER 53

(S. B. 398—By Mr. Brotherton, Mr. President)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, relating to establishing statewide energy cost reduction guidelines for new and significantly renovated buildings.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding

thereto a new article, designated article twenty-one, to read as follows:

ARTICLE 21. ENERGY COST REDUCTION GUIDELINES.

§5-21-1. Definitions.

§5-21-2. Establishment of energy cost reduction guidelines; certification; training.

§5-21-3. Advisory commission.

§5-21-4. Exemptions.

§5-21-5. Effective date of guidelines on permit applications.

§5-21-1. Definitions.

1 As used in this article:

2 (a) "ASHRAE" means the organization known as the
3 American Society of Heating, Refrigerating and Air Con-
4 ditioning Engineers.

5 (b) "Director" means the director of the governor's
6 office of economic and community development.

§5-21-2. Establishment of energy cost reduction guidelines; certification; training.

1 The director shall develop statewide energy cost re-
2 duction guidelines to be applicable to new and significant-
3 ly renovated buildings for which a building permit is is-
4 sued. In developing the guidelines, the director shall es-
5 tablish as the minimum criterion the ASHRAE 90-75
6 standard energy conservation in new building design.

7 Based on the state guidelines each local jurisdiction in
8 the state having a building code shall require each permit
9 application to be accompanied by sufficient information
10 to determine that the energy conservation measures
11 under the guidelines are met. A letter of certification from
12 an architect or a registered professional engineer may
13 provide adequate certification that the new construction
14 or renovation is in compliance with the minimum criteria
15 as established by the director.

16 The director shall provide training to local jurisdictions
17 on the application of the state guidelines, which may in-
18 clude training programs developed by agencies of the
19 federal government.

§5-21-3. Advisory commission.

1 To assist in the development and implementation of
2 statewide energy guidelines under this article, the director
3 shall appoint an advisory commission of seven members
4 who shall serve without compensation. In appointing the
5 commission, the director shall include representatives of
6 building code enforcement agencies, the architectural and
7 engineering professions, public utilities, the construction
8 industry, legislative bodies of local units of government
9 and the general public.

§5-21-4. Exemptions.

1 The following shall be exempt from compliance with
2 the energy cost reduction guidelines developed under
3 this article:

4 (a) Any type or class of building specifically made
5 exempt by the local jurisdiction;

6 (b) Mobile homes;

7 (c) Any structure neither heated nor cooled, nor de-
8 signed for human occupancy; and

9 (d) Any building specifically designated by a local
10 jurisdiction as being of historical significance.

§5-21-5. Effective date of guidelines on permit applications.

1 The provisions of this article shall not apply to any
2 application for a building permit made before the first
3 day of January, one thousand nine hundred eighty-one.

CHAPTER 54

(S. B. 152—By Mr. Brotherton, Mr. President, and Mr. Harman)

[Passed January 24, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one,
chapter five-a of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the creation and composition of the council of finance and administration, and providing for the annual joint meeting of the council of finance and administration with the joint committee on government and finance and providing for this meeting to be in November on call jointly by the president of the Senate, speaker of the House and commissioner of finance and administration.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-3. Council of finance and administration.

1 The council of finance and administration is hereby
2 created and shall be composed of ten members, four of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members shall
5 be the governor, attorney general, the state treasurer and
6 the state auditor. From the membership of the Legisla-
7 ture, the president of the Senate shall appoint three
8 senators as members of the council, not more than two of
9 whom shall be members of the same political party, and
10 the speaker of the House shall appoint three delegates as
11 members of the council, not more than two of whom shall
12 be members of the same political party. Members of the
13 council appointed by the president of the Senate and the
14 speaker of the House shall serve at the will and pleasure
15 of the officer making their appointment. The commis-
16 sioner of finance and administration shall serve as chair-
17 man of the council. Meetings of the council shall be upon
18 call of the chairman or a majority of the members thereof.
19 It shall be the duty of the chairman to call at least four
20 meetings in each fiscal year, one in each quarter, and all
21 meetings shall be open to the public. All meetings of the
22 council shall be held at the capitol building in a suitable
23 committee room which shall be made available by the
24 Legislature for such purpose: *Provided*, That the second

25 quarterly meeting in each fiscal year shall be held in No-
26 vember and shall be a joint meeting with the joint com-
27 mittee on government and finance of the Legislature call-
28 ed jointly by the president of the Senate, speaker of the
29 House and commissioner of finance and administration.

30 The council shall serve the department of finance and
31 administration in an advisory capacity for purposes of
32 reviewing the performance of the administrative and
33 fiscal procedures of the state and shall have the following
34 duties:

35 (1) To review and advise with the commissioner as to
36 all budget proposals to be submitted to the governor;

37 (2) At the time of the submission of the proposed bud-
38 get to the governor, to report to the governor its conclu-
39 sions concerning the proposed budget and any additions,
40 modifications or adjustments that it may care to suggest;

41 (3) To advise with the commissioner concerning such
42 studies of government and administration as it may con-
43 sider appropriate; and

44 (4) To advise with the commissioner in the preparation
45 of studies designed to provide long-term capital planning
46 and finance for state institutions and agencies. Members
47 of the council shall be paid all necessary expenses in-
48 curred in the discharge of their duties.

CHAPTER 55

(S. B. 345—By Mr. Brotherton, Mr. President, and Mr. Jones)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to empowering the state director of purchasing to review and, if necessary, rewrite the specifications and product descrip-

tions in the requests for quotations of all other state agencies bidding out purchases to assure that they do not favor a particular brand of product or vendor; and excluding construction and repair contracts entered into by the state commissioner of highways from review and approval of director of purchasing.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of director of purchasing.

- 1 The director, under the direction and supervision of the
2 commissioner, shall be the executive officer of the pur-
3 chasing division and shall have the power and duty to:
- 4 (1) Purchase or contract for, in the name of the state,
5 the commodities and printing required by the depart-
6 ments of the state government;
- 7 (2) Apply and enforce standard specifications estab-
8 lished in accordance with section five of this article as
9 hereinafter provided;
- 10 (3) Transfer to or between departments or sell com-
11 modities that are surplus, obsolete or unused as herein-
12 after provided;
- 13 (4) Have charge of central storerooms for the supply
14 of departments;
- 15 (5) Establish and maintain a laboratory for the test-
16 ing of commodities and make use of existing facilities
17 in state institutions for that purpose as hereinafter
18 provided;
- 19 (6) Direct the state agency for surplus property as
20 provided in sections forty-four and forty-five of this
21 article;
- 22 (7) Recommend to the commissioner that the right
23 and privilege of a person to bid on state purchases be
24 suspended when the director has evidence that such

25 person has violated any of the provisions of the purchas-
26 ing law or the rules and regulations of the director;

27 (8) Examine the provisions and terms of every con-
28 tract entered into for and on behalf of the state of
29 West Virginia that impose any obligation upon the state
30 to pay any sums of money or perform any particular
31 service or do any act or deed and approve each such
32 contract as to such provisions and terms; and the duty
33 of examination and approval herein set forth does not
34 supersede the responsibility and duty of the attorney
35 general to approve such contracts as to form: *Provided*,
36 That the provisions of this subdivision do not apply in
37 any respect whatever to construction or repair contracts
38 entered into by the state commissioner of highways; and

39 (9) Assure that the specifications and product descrip-
40 tions in all "requests for quotations" are prepared so as
41 to permit all potential suppliers-vendors who can meet
42 the requirements of the state an opportunity to bid. If
43 a state department or agency other than the purchasing
44 division prepared the specifications or descriptions, the
45 director of the purchasing division shall review such
46 specifications and descriptions before soliciting bids to
47 assure that the specifications and descriptions do not
48 favor a particular brand of product or vendor. If he
49 determines that any such specifications or descriptions
50 as written favor a particular brand of product or vendor
51 or if it is decided, either before or after the bids are
52 opened, that a product having different specifications or
53 quality or in different quantity will be bought, the direc-
54 tor shall rewrite the "requests for quotations" and the
55 matter shall be rebid.

CHAPTER 56

(S. B. 112—By Mr. Shaw)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter sixty of the code of
West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section seven-a; and to amend and reenact section three, article six of said chapter, relating to permitting the manufacture of ethyl alcohol for use in the production of gasohol for personal use; providing for licensing of persons manufacturing ethyl alcohol for use in the production of gasohol for personal use.

Be it enacted by the Legislature of West Virginia:

That article four, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a; and that section three, article six of said chapter be amended and reenacted to read as follows:

Article

- 4. Licenses.
- 6. Miscellaneous Provisions.

ARTICLE 4. LICENSES.

§60-4-7a. Individuals authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use.

1 The commission shall issue a license without fee au-
 2 thorizing an individual to manufacture ethyl alcohol
 3 solely for personal use by the individual in the production
 4 of gasohol and not for sale.

5 For purposes of this section, the term "gasohol" means
 6 any product suitable for use as a fuel in an internal
 7 combustion engine containing at least ten percent alcohol
 8 distilled from agricultural products or from any other
 9 nonpetroleum organic material.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-3. Applicability of chapter to certain uses of ethyl alcohol.

1 The provisions of this chapter relating to state mono-
 2 poly shall not apply to ethyl alcohol used:

3 (1) For scientific, chemical, mechanical or industrial
 4 purposes;

5 (2) By those authorized to procure ethyl alcohol tax-
6 free under the acts of Congress and regulations there-
7 under;

8 (3) In the manufacture of denatured alcohol produced
9 and used as provided by the acts of Congress and regula-
10 tions thereunder;

11 (4) In the manufacture of scientific, chemical, mechani-
12 cal and industrial preparations or products unfit for
13 beverage purposes;

14 (5) By those authorized to manufacture ethyl alcohol
15 for use in the production of gasohol for personal use pur-
16 suant to section seven-a, article four of this chapter.

17 Nothing in this section shall be so construed as to
18 exempt such users of ethyl alcohol from the license and
19 transportation provisions of this chapter.

CHAPTER 57

(S. B. 507—By Mr. Huffman)

[Passed March 4, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two-a of said chapter, all relating to requiring physicians to report to public health authorities only those diseases or conditions for which the state board of health requires a report and in the manner specified by the state health director; and eliminating the requirement that physicians report all communicable and infectious diseases regardless of type.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that section five, article two-a of said chapter be amended and reenacted, all to read as follows:

Article

2. Local Health Officers.

2A. Alternative Method of Organizing Local Health Agencies.

ARTICLE 2. LOCAL HEALTH OFFICERS.

§16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.

1 It shall be the duty of the director of the West
2 Virginia department of health, upon the recommenda-
3 tion of the county commission of the county, to appoint
4 in each county of this state a legally qualified physician,
5 who shall be known as the county health officer. It
6 shall also be the duty of such director, upon the recom-
7 mendation of the municipal council or other governing
8 body of any municipality, to appoint in such municipi-
9 pality a legally qualified physician, who shall be known
10 as the municipal health officer: *Provided*, That no muni-
11 cipality organized and existing without a special charter
12 from the Legislature and located within a county which
13 maintains a full-time county health officer, shall ap-
14 point a part-time municipal health officer. The county
15 and municipal health officers in office on the date this
16 section becomes effective shall, unless sooner removed,
17 continue to serve until their respective terms expire,
18 and until their successors have been appointed and have
19 qualified. Beginning on the first day of July, one thou-
20 sand nine hundred thirty-three, and on the first day of
21 July of each fourth year thereafter, a county health
22 officer shall be appointed as aforesaid to serve for a
23 term of four years, unless sooner removed by the said
24 county commission or by the West Virginia director of
25 health. Beginning on the first day of July, one thousand
26 nine hundred thirty-one, and on the first day of July of
27 each alternate year thereafter, a municipal health officer
28 shall be appointed as aforesaid to serve for a term of
29 two years, unless sooner removed by the said municipi-
30 pality or by the West Virginia director of health. If

31 the West Virginia director of health fails to confirm
32 the nomination of the person recommended as county
33 or municipal health officer, or if the West Virginia di-
34 rector of health or the county or municipal authority
35 removes any such officer, another nomination shall at
36 once be made to the West Virginia director of health
37 by the nominating authority.

38 The county health officer shall receive an official
39 salary of not less than three hundred dollars per annum
40 and such other amount as the county commission may
41 add for additional services and actual necessary travel-
42 ing expenses, unless for work specially done under
43 orders of the state department of health. The salary
44 of the county health officer shall be paid out of the
45 treasury of the county. It shall be the duty of every
46 practicing physician to report to the municipal or county
47 health officer, where there is such official, immediately
48 on diagnosis, those diseases or conditions for which a
49 report is required by the state board of health and in
50 the manner specified by the state health director which
51 may arise or come under the physician's treatment. The
52 health officer receiving such reports shall make to the
53 state health department a weekly report in a manner
54 specified by the director of health.

55 The county health officer together with the president
56 of the county commission and the prosecuting attorney
57 shall constitute the county board of health, of which
58 the county health officer shall be the executive officer.
59 The county board of health shall exercise all the powers
60 and enforce all the rules and regulations of the West
61 Virginia board of health, so far as applicable to such
62 county. In a county which has a full-time county health
63 officer, the jurisdiction of the county board of health
64 and of the county health officer shall be coextensive
65 with the county and shall include every city, town and
66 village therein which does not have a full-time health
67 officer of its own, but shall not include any city, town
68 or village therein which has such full-time health
69 officer. In a county which has a part-time health officer
70 only, the jurisdiction of the county board of health and

71 of such part-time health officer shall not extend to any
72 city, town or village therein having a full-time or part-
73 time health officer of its own. All county and municipal
74 boards of health and health officers shall be secondary
75 to the West Virginia board of health and the director of
76 the West Virginia department of health and subject to
77 all orders of the director of the West Virginia depart-
78 ment of health who may, if deemed expedient, act
79 through the county and municipal boards.

80 Any failure to comply with any of the provisions of
81 this section is a misdemeanor, and, upon conviction
82 thereof, the offender shall be fined not more than one
83 hundred dollars.

**ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL
HEALTH AGENCIES.**

**§16-2A-5. Powers and duties of county or municipal health
officers; required reporting of diseases.**

1 The county or municipal health officer appointed by
2 any local board of health created pursuant to the provi-
3 sions of this article shall be the executive officer of
4 such board of health. Under the supervision of the board,
5 he shall administer the provisions of this article, all
6 other laws of this state relating to public health and
7 applicable to his county or municipality, and the rules,
8 regulations and orders of such county or municipal board
9 of health and of the state board of health, so far as
10 such rules, regulations and orders are applicable to his
11 county or municipality.

12 Such health officer shall attend, but not vote, at all
13 meetings of his county or municipal board of health.
14 He shall act as secretary of such board and shall be in
15 charge of its offices. He shall supervise and direct the
16 activities of county or municipal health services, em-
17 ployees and facilities, except that the duties of such
18 health officer shall not include the rendering of medical
19 or surgical services on an individual basis to wards of
20 the county or municipality or to inmates of any public
21 institution operated or maintained by any county com-
22 mission or municipality.

23 It shall be the duty of every practicing physician to
24 report to the municipal or county health officer, where
25 there is such official, immediately on diagnosis, those
26 diseases or conditions for which a report is required
27 by the state board of health and in the manner specified
28 by the state health director which may arise or come
29 under the physician's treatment. Any health officer
30 receiving such reports shall make to the state director
31 of health a weekly report in a manner specified by the
32 director of health.

CHAPTER 58

(Com. Sub. for S. B. 376—By Mr. Steptoe)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten; and to amend section one, article nineteen of said chapter sixteen, all relating generally to the Uniform Brain Death Act; the definition of the term "death" as used in the code with respect thereto; providing that for legal and medical purposes in the state an individual who has sustained irreversible cessation of all functioning of the brain is dead; and civil and criminal immunity.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten; and that section one, article nineteen of said chapter, be amended and reenacted, all to read as follows:

Article

10. Uniform Brain Death Act.

19. Uniform Anatomical Gift Act.

ARTICLE 10. UNIFORM BRAIN DEATH ACT.

§16-10-1. Title.

§16-10-2. Brain death.

§16-10-3. Civil and criminal immunity.

§16-10-1. Title.

1 This article shall be known and may be cited as the
2 "Uniform Brain Death Act."

§16-10-2. Brain death.

1 For legal and medical purposes, an individual who has
2 sustained irreversible cessation of all functioning of the
3 brain is dead. A determination under this section must
4 be made in accordance with reasonable medical standards.

§16-10-3. Civil and criminal immunity.

1 A physician or any other person authorized by law to
2 determine death who makes such determination in ac-
3 cordance with section two of this article is not liable for
4 damages in any civil action or subject to prosecution in
5 any criminal proceeding for his acts or the acts of others
6 based on that determination. Any person who acts in good
7 faith in reliance on a determination of death is not liable
8 for damages in any civil action or subject to prosecution in
9 any criminal proceeding for such act.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.**§16-19-1. Definitions.**

1 (a) "Bank or storage facility" means a facility
2 licensed, accredited, or approved under the laws of any
3 state for storage or distribution of human bodies or parts
4 thereof.

5 (b) "Certification of death" means a written pro-
6 nouncement of death by the attending physician. Such
7 certification shall be required before the attending
8 physician shall allow removal of any bodily organs of the
9 decedent for transplant purposes.

10 (c) "Death" means that a person will be considered
11 dead if in the announced opinion of the attending
12 physician, made in accordance with reasonable medical

13 standards, the patient has sustained irreversible cessation
14 of all functioning of the brain.

15 (d) "Decedent" means a deceased individual and in-
16 cludes a stillborn infant or fetus.

17 (e) "Donor" means an individual who makes a gift
18 of all or part of his body.

19 (f) "Hospital" means a hospital licensed, accredited,
20 or approved under the laws of any state; includes a
21 hospital operated by the United States government, a
22 state, or a subdivision thereof, although not required to
23 be licensed under state laws.

24 (g) "Part" means organs, tissues, eyes, bones, arteries,
25 blood, other fluids and any other portions of a human
26 body.

27 (h) "Person" means an individual, corporation,
28 government or governmental subdivision or agency,
29 business trust, estate trust, partnership or association,
30 or any other legal entity.

31 (i) "Physician" or "surgeon" means a physician or
32 surgeon licensed or authorized to practice under the laws
33 of any state.

34 (j) "State" includes any state, district, commonwealth,
35 territory, insular possession, and any other area subject
36 to the legislative authority of the United States of
37 America.

CHAPTER 59

(S. B. 413—By Mr. Brotherton, Mr. President, and Miss Herndon)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of a municipal corporation or sanitary dis-

trict to accept grants and procure loans or temporary advances to pay part or all of the cost of acquisition or construction of its sewage works and construction of betterments and improvements thereto from any state, federal or public agency or any private party and to enter into necessary contracts and agreements with such federal or public agency or private party; and authorizing the payment of any such loan or temporary advance, and interest thereon, from bond proceeds, revenues of said sewage works or grants to the municipality or sanitary district from any state, federal or public agency or any private party or from any combination of such sources of payment.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-a, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-22a. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

1 Any municipality is authorized and empowered to
 2 accept grants and procure loans or temporary advances
 3 evidenced by notes or other negotiable instruments issued
 4 in the manner, and subject to the limitations, set forth
 5 with respect to bonds authorized to be issued under the
 6 provisions of this article, for the purpose of paying part
 7 or all of the cost of acquisition or construction of said
 8 sewage works and the construction of betterments and
 9 improvements thereto from any authorized agency of the
 10 state or from the United States of America or any federal
 11 or public agency or department of the United States or
 12 any private agency, corporation or individual, which loans
 13 or temporary advances may be repaid out of the proceeds
 14 of bonds authorized to be issued under the provisions of
 15 this article; and to enter into the necessary contracts and

16 agreements to carry out the purposes hereof with the
17 United States of America or any federal or public agency
18 or department of the United States, or with any private
19 agency, corporation or individual.

20 In no event shall any such loan or temporary advance
21 be a general obligation of the municipality and such
22 loans or temporary advances, including the interest
23 thereon, shall be paid solely from the proceeds of the
24 bonds authorized to be issued under the provisions of this
25 article, the revenues of the said sewage works so recited
26 in each such contract and agreement, grants to the
27 municipality from any agency of the state or from the
28 United States of America or any federal or public agency
29 or department of the United States or any private agency,
30 corporation or individual or from any combination of such
31 sources of payment.

CHAPTER 60

(H. B. 1661—By Mr. Tucker)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, eight, nine and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting public service districts to provide natural gas services for industrial, private, public or other uses; authorizing governing boards of public service districts to acquire privately or publicly owned public service properties; prohibiting governing boards from constructing, acquiring or establishing water, sewer or gas facilities within municipal corporations which own or operate such facilities, and exceptions thereto; prohibiting the establishment, construction or acquirement of a water, sewer or gas facility by a municipal corporation if such facility presently exists; requiring public service commission approval prior to any public service district acquiring any waterworks or gas system; prohibiting condemnation

proceedings by public service districts in acquiring privately owned waterworks or gas systems; granting authority to governing boards to promulgate rules and regulations in connection with public service properties owned or controlled by public service districts; providing a basis for a schedule of rates and charges; requiring the board to discontinue services to delinquent users of facilities; granting authority to districts to foreclose on liens against real property created due to delinquent fees; and granting districts the authority to accept loans and temporary advances from federal agencies.

Be it enacted by the Legislature of West Virginia:

That sections one, two, eight, nine and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

- §16-13A-1. General purpose of districts.
- §16-13A-2. Creation of districts by county commission; enlarging or reducing district; consolidation; agreements, etc., infringing upon powers of county commission.
- §16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.
- §16-13A-9. Rules and regulations; service rates and charges; discontinuance of service to delinquent users; requiring connections with sewer facilities; lien for delinquent fees; certain sewer disposal systems exempted.
- §16-13A-24. Acceptance of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

§16-13A-1. General purpose of districts.

1 Any territory constituting the whole or any part of one or
2 more counties in the state so situated that the construction or
3 acquisition by purchase or otherwise and the maintenance,
4 operation, improvement and extension of, properties supplying
5 water or sewerage services, or gas distribution services or all
6 of these within such territory, will be conducive to the pre-
7 servation of the public health, comfort and convenience of
8 such area, may be constituted a public service district under
9 and in the manner provided by this article. The words "public

10 service properties," when used in this article, shall mean
11 and include any facility used or to be used for or in connection
12 with (1) the diversion, development, pumping, impounding,
13 treatment, storage, distribution or furnishing of water to or for
14 the public for industrial, public, private or other uses (herein
15 sometimes referred to as "water facilities," (2) the collection,
16 treatment, purification or disposal of liquid or solid wastes,
17 sewage or industrial wastes (herein sometimes referred to as
18 "sewer facilities" or "land fills") or (3) the distribution or the
19 furnishing of natural gas for the public, for industrial, public,
20 private or other uses (herein sometimes referred to as "gas
21 utilities or gas system").

**§16-13A-2. Creation of districts by county commission; enlarging
or reducing district; consolidation; agreements, etc.,
infringing upon powers of county commission.**

1 The county commission of any county may on its own
2 motion by order duly adopted propose the creation of such
3 public service district within such county, setting forth in
4 such order a description sufficient to identify the territory to
5 be embraced therein and the name of such proposed district,
6 or any one hundred legal voters resident within and owning
7 real property within the limits of such proposed public service
8 district within one or more counties may petition for the
9 creation thereof, which petition shall contain a description
10 sufficient to identify the territory to be embraced therein and
11 the name of such proposed district. Any territory may be in-
12 cluded regardless of whether or not such territory includes one
13 or more cities, incorporated towns or other municipal corpora-
14 tions which own and operate any public service properties and
15 regardless of whether or not it includes one or more cities,
16 incorporated towns or other municipal corporations being
17 served by privately owned public service properties: *Provided,*
18 That the boundaries of any public service district organized
19 under this article shall conform to or follow magisterial dis-
20 trict lines except where less than a whole of any magisterial
21 district is to be included, in which latter case that part of any
22 such boundary shall conform to other natural boundary lines,
23 or the lines of a fixed survey: *Provided, however,* That the
24 same territory shall not be included within the boundaries of

25 more than one public service district except where such terri-
26 tory or part thereof is included within the boundaries of a
27 separate public service district organized to supply water,
28 sewerage services or gas facilities not being furnished within
29 such territory or part thereof: *Provided further*, That no city,
30 incorporated town or other municipal corporation shall be in-
31 cluded within the boundaries of such proposed district except
32 upon the adoption of a resolution of the governing body of such
33 city, incorporated town or other municipal corporation con-
34 senting thereto.

35 Such petition shall be filed in the office of the clerk of the
36 county commission of the county in which the territory to con-
37 stitute the proposed district is situated, and if such territory
38 is situated in more than one county then such petition shall
39 be filed in the office of the clerk of the county commission of
40 the county in which the major portion of such territory ex-
41 tends, and a copy thereof (omitting signatures) shall be filed
42 with each of the clerks of the county commission of the other
43 county or counties into which the territory extends. It shall be
44 the duty of the clerk of the county commission receiving such
45 petition to present same to the county commission of such
46 county at the first regular meeting after such filing or at a
47 special meeting called for the consideration thereof.

48 When the county clerk of any county enters an order on its
49 own motion proposing the creation of a public service district,
50 as aforesaid, or when a petition for such creation is presented,
51 as aforesaid, the county commission shall at the same session
52 fix a date of hearing in such county on the creation of the
53 proposed public service district, which date so fixed shall be
54 not more than forty days nor less than twenty days from the
55 date of such action. If the territory proposed to be included
56 is situated in more than one county, the county commission,
57 when fixing a date of hearing, shall provide for notifying the
58 county commission and clerk thereof of each of the other
59 counties into which the territory extends of the date so fixed.
60 The clerk of the county commission of each county in which
61 any territory in the proposed public service district is located
62 shall cause notice of such hearing and the time and place
63 thereof, and setting forth a description of all of the territory

64 proposed to be included therein to be given by publication as
65 a Class I legal advertisement in compliance with the provisions
66 of article three, chapter fifty-nine of this code, and the pub-
67 lication area for such publication shall be each county in which
68 any territory in the proposed public service district is located.
69 The publication shall be at least ten days prior to such hear-
70 ing. In all cases where proceedings for the creation of such
71 public service districts are initiated by petition as aforesaid
72 the person filing the petition shall advance or satisfactorily
73 indemnify the payment of the cost and expenses of publishing
74 the hearing notice, and otherwise the costs and expenses of
75 such notice shall be paid in the first instance by the county
76 commission out of contingent funds or any other funds avail-
77 able or made available for that purpose. In addition to the
78 notice required herein to be published, there shall also be
79 posted in at least five conspicuous places in the proposed pub-
80 lic service district, a notice containing the same information
81 as is contained in the published notice. The posted notices
82 shall be posted not less than ten days before said hearing.

83 All persons residing in or owning or having any interest
84 in property in such proposed public service district shall have
85 an opportunity to be heard for and against its creation. At
86 such hearing the county commission before which the hearing
87 is conducted shall consider and determine the feasibility of the
88 creation of the proposed district. When it shall have been thus
89 determined that the construction or acquisition by purchase or
90 otherwise, and maintenance, operation, improvement, and
91 extension of public service properties by such public service
92 district will be conducive to the preservation of public health,
93 comfort and convenience of such area, then such county com-
94 mission shall by order create such public service district, and
95 such order shall be conclusive and final in that regard. If the
96 commission shall, after due consideration, determine that the
97 proposed district will not be conducive to the preservation of
98 public health, comfort or convenience of such area, or that the
99 creation of the proposed district as set forth and described in
100 the petition or order is not feasible, it may refuse to enter an
101 order creating the same, or it may enter an order amending the
102 description of the proposed district, and create said district as
103 amended. The clerk of the county commission of each county

104 into which any part of such district extends shall retain in his
105 office an authentic copy of the order creating the same:
106 *Provided*, That if at such hearing written protest is filed by
107 thirty percent or more of the qualified voters registered and
108 residing within said district, then the county commission shall
109 not take any further action in creating such district unless the
110 creation of such district shall be approved by a majority vote
111 of the qualified registered voters voting at a referendum to be
112 called by the county commission for such purpose. Such refer-
113 endum shall be called and held in the manner provided in the
114 general election laws of the state of West Virginia applicable
115 thereto and the funds therefor shall be supplied from any
116 county funds available for such purpose, or from funds sup-
117 plied from the persons who petitioned for the creation of such
118 district. If a majority of the qualified registered electors par-
119 ticipating in said election shall vote against the creation of
120 said district, then such district shall not be created. If, however,
121 a majority of the qualified registered voters participating in
122 such referendum vote in favor of the creation of such district,
123 then the county commission shall duly enter its order creating
124 such district.

125 After the creation of such district the county commission
126 may, if in its discretion it deems it necessary, feasible and
127 proper, enlarge the said district to include additional areas,
128 reduce the area of said district, where facilities, equipment,
129 service or materials have not been extended, or establish or
130 consolidate two or more such districts: *Provided*, That where
131 the county commission determines on its own motion by order
132 entered of record, or there is a petition, to enlarge the district
133 or reduce the area of the district, all of the applicable pro-
134 visions of this article providing for hearing, notice of hearing
135 and protest shall apply with like effect as if a district were be-
136 ing created. The districts may not enter into any agreement,
137 contract or covenant that infringes upon, impairs, abridges or
138 usurps the duties, rights or powers of the county commission,
139 as set forth in this article, or conflicts with any provision of
140 this article.

§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

1 The board is hereby authorized to acquire any publicly
2 or privately owned public service properties located within the
3 boundaries of the district regardless of whether or not all
4 or any part of such properties are located within the corporate
5 limits of any city, incorporated town or other municipal cor-
6 poration, included within the district, and shall have power to
7 purchase and acquire all rights and franchises and any and all
8 property within or outside the district necessary or incidental
9 to the purpose of the district.

10 The board shall have power and authority to construct any
11 public service properties within or outside the district necessary
12 or incidental to its purposes, and each such district is hereby
13 empowered and authorized to acquire, construct, maintain and
14 operate any such public service properties within the corporate
15 limits of any city, incorporated town, or other municipal cor-
16 poration included within the district or in any unincorporated
17 territory within ten miles of the territorial boundaries of the
18 district: *Provided*, That if any incorporated city, town or other
19 municipal corporation included within the district shall own
20 and operate either water facilities, sewer facilities, or gas
21 facilities, or all of these, then the district shall not acquire,
22 construct, establish, improve or extend any public service prop-
23 erties of the same kind within such city, incorporated towns
24 or other municipal corporations, or the adjacent unincorporat-
25 ed territory served by such cities, incorporated towns or other
26 municipal corporations, except upon the consent of such cities,
27 incorporated towns or other municipal corporations, and in
28 conformity and compliance with the rights of the holders of
29 any revenue bonds or obligations theretofore issued by such
30 cities, incorporated towns or other municipal corporations then
31 outstanding, and in accordance with the ordinance, resolution
32 or other proceedings which authorize the issuance of such
33 revenue bonds or obligations.

34 Whenever such district shall have constructed, acquired or
35 established water facilities, sewer facilities or gas facilities for
36 water, sewer or gas services within any city, incorporated town
37 or other municipal corporation included within a district, then

38 such city, incorporated town or other municipal corporation
39 shall not thereafter construct, acquire or establish any facilities
40 of the same kind within such city, incorporated town or other
41 municipal corporation without the consent of such district.

42 For the purpose of acquiring any public service properties
43 or lands, rights or easements deemed necessary or incidental
44 for the purposes of the district, each such district shall have
45 the right of eminent domain to the same extent and to be
46 exercised in the same manner as now or hereafter provided by
47 law for such right of eminent domain by cities, incorporated
48 towns and other municipal corporations: *Provided*, That such
49 board shall not acquire all or any substantial part of a
50 privately owned waterworks system unless and until au-
51 thorized so to do by the public service commission of West
52 Virginia, and that this section shall not be construed to autho-
53 rize any district to acquire through condemnation proceedings
54 either in whole or substantial part an existing privately owned
55 waterworks plant or system or gas facilities located in or fur-
56 nishing water or gas service within such district or extensions
57 made or to be made by it in territory contiguous to such exist-
58 ing plant or system, nor shall any such board construct or
59 extend its public service properties to supply its services into
60 areas served by or in competition with existing waterworks or
61 gas facilities or extensions made or to be made in territory
62 contiguous to such existing plant or system by the owner
63 thereof.

**§16-13A-9. Rules and regulations; service rates and charges; dis-
continuance of service to delinquent users; requiring
connections with sewer facilities; lien for delinquent
fees; certain sewer disposal systems exempted.**

1 The board shall have the power to make, enact and enforce
2 all needful rules and regulations in connection with the acqui-
3 sition, construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of any
5 public service properties owned or controlled by the district,
6 and it shall be the duty of such board to establish rates and
7 charges for the services and facilities it furnishes, which shall
8 be sufficient at all times, notwithstanding the provisions of any
9 other law or laws, to pay the cost of maintenance, operation

10 and depreciation of such public service properties and principal
11 of and interest on all bonds issued and other obligations in-
12 curred under the provisions of this article and all reserve or
13 other payments provided for in the proceedings which autho-
14 rize the issuance of any bonds hereunder. The schedule of such
15 rates and charges may be based upon either (a) the consump-
16 tion of water or gas on premises connected with such facilities,
17 taking into consideration domestic, commercial, industrial and
18 public use of water and gas; or (b) the number and kind of
19 fixtures connected with such facilities located on the various
20 premises; or (c) the number of persons served by such facilities;
21 or (d) any combination thereof; or (e) may be determined on
22 any other basis or classification which the board may deter-
23 mine to be fair and reasonable, taking into consideration the
24 location of the premises served and the nature and extent of
25 the services and facilities furnished. Where water, sewer and
26 gas services are all furnished to any premises the schedule of
27 charges may be billed as a single amount for the aggregate
28 thereof. Whenever any rates, rentals or charges for services or
29 facilities furnished shall remain unpaid for a period of thirty
30 days after the same shall become due and payable the prop-
31 erty and the owner thereof, as well as the user of the services
32 and facilities shall be delinquent until such time as all such
33 rates and charges are fully paid. The board shall be obligated
34 under reasonable rules and regulations, to shut off and dis-
35 continue water, sewer and gas services to all delinquent users
36 of either water facilities, sewer facilities, or gas facilities or all
37 of these, and shall not restore either water facilities, sewer
38 facilities, or gas facilities to any delinquent user of either water
39 facilities, sewer facilities, or gas facilities, until all delinquent
40 charges for water facilities, sewer facilities, and gas facilities,
41 including reasonable interest and penalty charges, have been
42 paid in full.

43 In the event that any city, incorporated town or other munic-
44 ipal corporation included within the district shall own and
45 operate separately either water facilities, sewer facilities, or gas
46 facilities, and the district shall own and operate within such
47 city, incorporated town or other municipal corporation the
48 other kind of facilities, either water, sewer or gas facilities,
49 as the case may be, then the district and such city, incorporated

50 town or other municipal corporation shall have power to cove-
51 nant and contract with each other to shut off and discontinue
52 the supplying of the kind of facilities furnished by the district
53 or such city, incorporated town or other municipal corpora-
54 tion, as the case may be, for the nonpayment of fees and
55 charges for the other kind of facilities furnished by the district
56 or city, incorporated town or other municipal corporation, as
57 the case may be.

58 Any district furnishing sewer facilities within the district
59 shall also have power to require all owners, tenants or occu-
60 pants of any houses, dwellings and buildings located near any
61 such sewer facilities, where sewage will flow by gravity from
62 such houses, dwellings or buildings into such sewer facilities, to
63 connect with and use such sewer facilities, and to cease the
64 use of all other means for the collection, treatment and dis-
65 posal of sewage and waste matters from such houses, dwell-
66 ings and buildings where there is such gravity flow and such
67 houses, dwellings and buildings can be adequately served by the
68 sewer facilities of the district, and it is hereby found, determin-
69 ed and declared that the mandatory use of such sewer facilities
70 provided for in this paragraph is necessary and essential for the
71 health and welfare of the inhabitants and residents of such
72 districts and of the state.

73 Whenever any district has made available sewer facilities
74 to any owner, tenant or occupant of any house, dwelling or
75 building located near such sewer facility, and the engineer for
76 the district has certified that such sewer facilities are available
77 to and are adequate to serve such owner, tenant, or occupant,
78 and sewage will flow by gravity from such house, dwelling or
79 building into such sewer facilities, the district shall have the
80 immediate right and duty to charge, and such owner, tenant or
81 occupant shall have the duty to pay from and after the date
82 of receiving notice that such facilities are available, the rates
83 and charges for services established under this article.

84 All delinquent fees, rates and charges of the district for
85 either water facilities, sewer facilities or gas facilities shall be
86 liens on the premises served of equal dignity, rank and priority
87 with the lien on such premises of state, county, school and
88 municipal taxes. When such fees, rates and charges have been

89 delinquent for thirty days, the district shall have power to
90 forthwith foreclose the lien on the premises served in the same
91 manner now provided in the laws of the state of West Virginia
92 for the foreclosure of mortgages on real property.

93 Anything in this section to the contrary notwithstanding,
94 any establishment, as defined in chapter twenty, article five-a,
95 section two, now or hereafter operating its own sewage disposal
96 system, pursuant to a permit issued by the department of
97 natural resources, as prescribed by chapter twenty, article
98 five-a, section seven of this code, shall be exempt from the
99 provisions of this section.

§16-13A-24. Acceptance of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

1 Any public service district created pursuant to the provisions
2 of this article is authorized and empowered to accept loans or
3 grants or temporary advances for the purpose of paying part or
4 all of the cost of construction or acquisition of water systems,
5 sewage systems, or gas facilities, or all of these, and the other
6 purposes herein authorized, from the United States of America
7 or any federal or public agency or department of the United
8 States or any private agency, corporation or individual, which
9 temporary advances may be repaid out of the proceeds of the
10 bonds authorized to be issued under the provisions of this
11 article and to enter into the necessary contracts and agreements
12 to carry out the purposes hereof with the United States of
13 America or any federal or public agency or department of the
14 United States, or with any private agency, corporation or indi-
15 vidual.

CHAPTER 61

(S. B. 20—By Mr. Hamilton)

[Passed January 29, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter two of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to legal holidays; redesignating the last Monday in May as Memorial Day.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS;
CONSTRUCTION OF STATUTES; DEFINITIONS.**

§2-2-1. Legal holidays; official acts or court proceedings.

1 The following days shall be regarded, treated and ob-
2 served as legal holidays, viz: The first day of January,
3 commonly called "New Year's Day"; the twelfth day of
4 February, commonly called "Lincoln's Birthday"; the
5 third Monday of February, commonly called "Washing-
6 ton's Birthday"; the last Monday in May, commonly
7 called "Memorial Day"; the twentieth day of June, com-
8 monly called "West Virginia Day"; the fourth day of
9 July, commonly called "Independence Day"; the first
10 Monday of September, commonly called "Labor Day";
11 the second Monday of October, commonly called "Colum-
12 bus Day"; the eleventh day of November, hereafter
13 referred to as "Veterans Day"; the fourth Thursday
14 of November, commonly called "Thanksgiving Day";
15 the twenty-fifth day of December, commonly called
16 "Christmas Day"; any national, state or other election
17 day throughout the district or municipality wherein the
18 election is held; and all days which may be appointed
19 or recommended by the governor of this state, or the
20 president of the United States, as days of thanksgiving,
21 or for the general cessation of business; and when any
22 of these days or dates falls on a Sunday, then the suc-
23 ceeding Monday shall be regarded, treated and observed
24 as the legal holiday.

25 When the return day of any summons or other court
26 proceeding or any notice or time fixed for holding any
27 court or doing any official act shall fall on any of these
28 holidays, the next ensuing day which is not a Saturday,

29 Sunday or legal holiday shall be taken as meant and
30 intended: *Provided*, That nothing herein contained shall
31 increase nor diminish the legal school holidays provided
32 for in section two, article five, chapter eighteen-a of
33 this code.

CHAPTER 62

(H. B. 933—By Mr. Stephens)

[Passed March 5, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to the observance of Martin Luther King's birthday by public employees.

Be it enacted by the Legislature of West Virginia:

That article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-b, to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1b. Martin Luther King day.

1 Notwithstanding the provisions of section one-a of this
2 article the observance of Martin Luther King day may be
3 observed on his actual birthday, the fifteenth of January, by
4 public employees. No public employer shall refuse to allow
5 any employee time off for the observance of Martin Luther
6 King day on his actual birthday; however, such time off in
7 observance of Martin Luther King day shall be charged, if
8 the employer so agrees, against the participating employee's
9 annual leave or accrued vacation time: *Provided*, That in no
10 event shall the observance of Martin Luther King day result
11 in the closing of the office of the clerk of any circuit court or

- 12 clerk of any county commission or clerk of the supreme court
13 of appeals on any day other than a Sunday, a Saturday or a
14 legal holiday.

CHAPTER 63

(H. B. 1136—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporate powers of the West Virginia housing development fund generally; providing for the housing development fund to make and to re-finance loans for the rehabilitation or improvement of existing residential housing.

Be it enacted by the Legislature of West Virginia:

That section six, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

- 1 The housing development fund is hereby granted, has and
2 may exercise all powers necessary or appropriate to carry out
3 and effectuate its corporate purpose, including, but not limited
4 to, the following:
- 5 (1) To make or participate in the making of federally in-
6 sured construction loans to sponsors of land development for
7 residential housing for occupancy by eligible persons and
8 families or to sponsors of residential housing for occupancy by
9 eligible persons and families. Such loans shall be made only
10 upon determination by the housing development fund that
11 construction loans are not otherwise available, wholly or in
12 part, from private lenders upon reasonably equivalent terms
13 and conditions;

14 (2) To make temporary loans, with or without interest, but
15 with such security for repayment as the housing development
16 fund determines reasonably necessary and practicable, from
17 the operating loan fund, if created, established, organized and
18 operated in accordance with the provisions of section nineteen
19 of this article, to defray development costs to sponsors of land
20 development for residential housing for occupancy by persons
21 and families of low and moderate income or residential hous-
22 ing construction for occupancy by persons and families of low
23 and moderate income which is eligible or potentially eligible
24 for federally insured construction loans, federally insured mort-
25 gages, federal mortgages, or uninsured construction loans or
26 uninsured mortgage loans;

27 (3) To make or participate in the making of long-term
28 federally insured mortgage loans to sponsors of residential
29 housing for occupancy by eligible persons and families, or to
30 eligible persons and families, who may purchase or construct
31 such residential housing. Such loans shall be made only upon
32 determination by the housing development fund that long-term
33 mortgage loans are not otherwise available, wholly or in part,
34 from private lenders upon reasonably equivalent terms and
35 conditions;

36 (4) To accept appropriations, gifts, grants, bequests and
37 devises, and to utilize or dispose of the same to carry out its
38 corporate purpose;

39 (5) To make and execute contracts, releases, compromises,
40 compositions and other instruments necessary or convenient
41 for the exercise of its powers, or to carry out its corporate
42 purpose;

43 (6) To collect reasonable fees and charges in connection
44 with making and servicing its loans, notes, bonds, obligations,
45 commitments and other evidences of indebtedness, and in con-
46 nection with providing technical, consultative and project as-
47 sistance services. Such fees and charges shall be limited to the
48 amounts required to pay the costs of the housing development
49 fund, including operating and administrative expenses, and
50 reasonable allowances for losses which may be incurred;

- 51 (7) To invest any funds not required for immediate dis-
52 bursement in any of the following securities:
- 53 (i) Direct obligations of or obligations guaranteed by the
54 United States of America;
- 55 (ii) Bonds, debentures, notes or other evidences of indebt-
56 edness issued by any of the following agencies: Banks for co-
57 operatives; federal intermediate credit banks; federal home loan
58 bank system; Export-Import Bank of the United States; federal
59 land banks; the Federal National Mortgage Association or the
60 Government National Mortgage Association;
- 61 (iii) Public housing bonds issued by public agencies
62 or municipalities and fully secured as to the pay-
63 ment of both principal and interest by a pledge of
64 annual contributions under an annual contributions con-
65 tract or contracts with the United States of America;
66 or temporary notes issued by public agencies or muni-
67 cipalities or preliminary loan notes issued by public
68 agencies or municipalities in each case, fully secured
69 as to the payment of both principal and interest by a
70 requisition or payment agreement with the United States of
71 America;
- 72 (iv) Certificates of deposit secured by obligations of the
73 United States of America;
- 74 (v) Direct obligations of or obligations guaranteed by the
75 state of West Virginia;
- 76 (vi) Direct and general obligations of any other state within
77 the territorial United States, to the payment of the principal
78 of and interest on which the full faith and credit of such state
79 is pledged: *Provided*, That at the time of their purchase, such
80 obligations are rated in either of the two highest rating cate-
81 gories by a nationally recognized bond-rating agency; and
- 82 (vii) Any fixed interest bond, note or debenture of any
83 corporation organized and operating within the United States:
84 *Provided, however*, That such corporation shall have a mini-
85 mum net worth of fifteen million dollars and its securities or
86 its parent corporation's securities are listed on one or more
87 of the national stock exchanges: *Provided further*, That (1)

88 such corporation has earned a profit in eight of the preceding
89 ten fiscal years as reflected in its statements, and (2) such cor-
90 poration has not defaulted in the payment of principal or
91 interest on any of its outstanding funded indebtedness during
92 its preceding ten fiscal years, and (3) the bonds, notes or
93 debentures of such corporation to be purchased are rated "AA"
94 or the equivalent thereof or better than "AA" or the equiva-
95 lent thereof by at least two or more nationally recognized
96 rating services such as Standard and Poor's, Dun & Bradstreet
97 or Moody's;

98 (8) To sue and be sued;

99 (9) To have a seal and alter the same at will;

100 (10) To make, and from time to time, amend and repeal
101 bylaws and rules and regulations not inconsistent with the
102 provisions of this article;

103 (11) To appoint such officers, employees and consultants
104 as it deems advisable and to fix their compensation and pre-
105 scribe their duties;

106 (12) To acquire, hold and dispose of personal property for
107 its corporate purposes;

108 (13) To enter into agreements or other transactions with any
109 federal or state agency, any person and any domestic or for-
110 eign partnership, corporation, association or organization;

111 (14) To acquire real property, or an interest therein, in its
112 own name, by purchase or foreclosure, where such acquisition
113 is necessary or appropriate to protect any loan in which the
114 housing development fund has an interest and to sell, transfer
115 and convey any such property to a buyer and, in the event such
116 sale, transfer or conveyance cannot be effected with reasonable
117 promptness or at a reasonable price, to lease such property to
118 a tenant;

119 (15) To sell, at public or private sale, any mortgage or
120 other negotiable instrument or obligation securing a construc-
121 tion, rehabilitation, improvement, land development, mortgage
122 or temporary loan;

123 (16) To procure insurance against any loss in connection

124 with its property in such amounts, and from such insurers, as
125 may be necessary or desirable;

126 (17) To consent, whenever it deems it necessary or desir-
127 able in the fulfillment of its corporate purpose, to the modifi-
128 cation of the rate of interest, time of payment or any install-
129 ment of principal or interest, or any other terms, of mortgage
130 loan, mortgage loan commitment, construction loan, rehabili-
131 tation loan, improvement loan, temporary loan, contract or
132 agreement of any kind to which the housing development fund
133 is a party;

134 (18) To make and publish rules and regulations respecting
135 its federally insured mortgage lending, uninsured mortgage
136 lending, construction lending, rehabilitation lending, improve-
137 ment lending and lending to defray development costs and any
138 such other rules and regulations as are necessary to effectuate
139 its corporate purpose;

140 (19) To borrow money to carry out and effectuate its cor-
141 porate purpose and to issue its bonds or notes as evidence of
142 any such borrowing in such principal amounts and upon such
143 terms as shall be necessary to provide sufficient funds for
144 achieving its corporate purpose, except that no notes shall be
145 issued to mature more than ten years from date of issuance and
146 no bonds shall be issued to mature more than fifty years from
147 date of issuance;

148 (20) To issue renewal notes, to issue bonds to pay notes
149 and, whenever it deems refunding expedient, to refund any
150 bonds by the issuance of new bonds, whether the bonds to be
151 refunded have or have not matured except that no such re-
152 newal notes shall be issued to mature more than ten years from
153 date of issuance of the notes renewed and no such refunding
154 bonds shall be issued to mature more than fifty years from the
155 date of issuance;

156 (21) To apply the proceeds from the sale of renewal notes
157 or refunding bonds to the purchase, redemption or payment of
158 the notes or bonds to be refunded;

159 (22) To provide technical services to assist in the planning,
160 processing, design, construction, rehabilitation or improve-

161 ment of residential housing for occupancy by eligible persons
162 and families or land development for residential housing for
163 occupancy by eligible persons and families;

164 (23) To provide consultative project assistance services for
165 residential housing for occupancy by eligible persons and
166 families and for land development for residential housing for
167 occupancy by eligible persons and families and for the resi-
168 dents thereof with respect to management, training and social
169 services;

170 (24) To promote research and development in scientific
171 methods of constructing low cost residential housing of high
172 durability;

173 (25) With the proceeds from the issuance of notes or bonds
174 of the housing development fund, including, but not limited to,
175 mortgage finance bonds, or with other funds available to the
176 housing development fund for such purpose, to participate in
177 the making of or to make loans to mortgagees approved by the
178 housing development fund and take such collateral security
179 therefor as is approved by the housing development fund and
180 to invest in, purchase, acquire, sell or participate in the sale of,
181 or take assignments of, notes and mortgages, evidencing loans
182 for the construction, rehabilitation, improvement, purchase or
183 refinancing of residential housing in this state: *Provided*, That
184 the housing development fund shall obtain such written assur-
185 ances as shall be satisfactory to it that the proceeds of such
186 loans, investments or purchases will be used, as nearly as
187 practicable, for the making of or investment in long-term fed-
188 erally insured mortgage loans or federally insured construction
189 loans, uninsured mortgage loans, or uninsured construction
190 loans, for residential housing for occupancy by eligible persons
191 and families in this state or that other moneys in an amount
192 approximately equal to such proceeds shall be committed and
193 used for such purpose;

194 (26) To make or participate in the making of uninsured
195 construction loans to sponsors of land development for resi-
196 dential housing for occupancy by eligible persons and families
197 or to sponsors of residential housing for occupancy by eligible
198 persons and families, or to eligible persons and families who

199 may construct such housing. Such loans shall be made only
200 upon determination by the housing development fund that
201 construction loans are not otherwise available, wholly or in
202 part, from private lenders upon reasonably equivalent terms
203 and conditions;

204 (27) To make or participate in the making of long-term
205 uninsured mortgage loans to sponsors of residential housing
206 for occupancy by eligible persons and families, or to eligible
207 persons and families who may purchase or construct such resi-
208 dential housing. Such loans shall be made only upon determi-
209 nation by the housing development fund that long-term mort-
210 gage loans are not otherwise available, wholly or in part, from
211 private lenders upon reasonably equivalent terms and condi-
212 tions;

213 (28) To obtain options to acquire and to acquire real prop-
214 erty, or any interest therein, in its own name, by purchase, or
215 lease, or otherwise, which is found by the housing develop-
216 ment fund to be suitable, or potentially suitable, as a site, or
217 as part of a site, for the construction of residential housing; to
218 hold such real property; to make loans to finance the per-
219 formance of land development activities on or in connection
220 with any such real property or to perform land development
221 activities on or in connection with any such real property; to
222 sponsor the development of residential housing for occupancy
223 by eligible persons and families on such real property; and to
224 sell, transfer and convey, lease or otherwise dispose of such
225 real property, or lots, tracts or parcels of such real property,
226 or residential housing, for such prices, upon such terms, con-
227 ditions and limitations, and at such time or times as the hous-
228 ing development fund shall determine, to sponsors of resi-
229 dential housing: *Provided, however,* That if the housing devel-
230 opment fund shall determine that any such real property or any
231 lots, tracts or parcels of such real property are not at any time
232 or times needed for present or future residential housing, the
233 housing development fund may sell, transfer and convey, lease
234 or otherwise dispose of the same, to such purchasers or leasees,
235 for such prices, upon such terms, conditions and limitations,
236 and for such uses and purposes as the housing development
237 fund shall determine;

238 (29) To make loans, with or without interest, but with such
239 security for repayment as the housing development fund deter-
240 mines reasonably necessary and practicable from the land de-
241 velopment fund, if created, established, organized and operated
242 in accordance with the provisions of section twenty-a of this
243 article, to sponsors of land development, to defray development
244 costs and other costs of land development;

245 (30) To exercise all of the rights, powers and authorities of
246 a public housing authority as set forth and provided in article
247 fifteen, chapter sixteen of this code in any area or areas of the
248 state which the housing development fund shall determine by
249 resolution to be necessary or appropriate; and

250 (31) To make or participate in the making of loans to
251 eligible persons and families for the purpose of rehabilitating
252 or improving existing residential housing, or to owners of
253 existing residential housing for occupancy by eligible persons
254 and families for the purpose of rehabilitating or improving such
255 residential housing and, in connection therewith, to refinance
256 existing loans involving the same property. Such loans shall
257 be made only upon determination by the housing development
258 fund that rehabilitation or improvement loans are not otherwise
259 available, wholly or in part, from private lenders upon reason-
260 ably equivalent terms and conditions.

261 (32) Whenever the housing development fund deems it
262 necessary, in order to exercise any of its powers set forth in
263 subdivision twenty-eight of this section, and upon being un-
264 able to agree with the owner or owners of real property or
265 interest therein sought to be acquired by the fund upon a price
266 for acquisition of private property not being used or operated
267 by the owner in the production of agricultural products, to
268 exercise the powers of eminent domain in the acquisition of
269 such real property or interest therein in the manner provided
270 under chapter fifty-four of this code, and the purposes set
271 forth in subdivision twenty-eight of this section are hereby
272 declared to be public purposes for which private property may
273 be taken. For the purposes of this section, the determination
274 of "use or operation by the owner in the production of agri-
275 cultural products" means that the principal use of such real
276 estate is for the production of food and fiber by agricultural

277 production other than forestry, and the fund shall not initiate
278 or exercise any powers of eminent domain without first re-
279 ceiving an opinion in writing from both the governor and the
280 commissioner of agriculture of this state that at the time the
281 fund has first attempted to acquire such real estate or inter-
282 est therein, such real estate or interest therein was not in fact
283 being used or operated by the owner in the production of agri-
284 cultural products.

CHAPTER 64

(H. B. 1135—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the authorized limit on borrowing of the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

That section twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-20. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes issued
2 by the housing development fund shall not exceed seven hun-
3 dred million dollars outstanding at any one time: *Provided,*
4 That in computing the total amount of bonds and notes which
5 may at any one time be outstanding, the principal amount of
6 any outstanding bonds or notes refunded or to be refunded
7 either by application of the proceeds of the sale of any refund-

8 ing bonds or notes of the housing development fund or by
9 exchange for any such refunding bonds or notes, shall be
10 excluded.

CHAPTER 65

(H. B. 879—By Miss Shuman and Mr. Greer)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to continuing and reestablishing the state board of insurance changing the name thereof to the state board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve, to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations, pur-
3 suant to section nine, article ten, chapter four of this code,
4 the Legislature hereby finds and declares that the state board
5 of insurance should be continued and reestablished but shall
6 be known and referred to as the state board of risk and in-
7 surance management. Accordingly, notwithstanding the pro-
8 visions of section four, article ten, chapter four of this code,
9 the state board of insurance shall continue to exist until the first
10 day of July, one thousand nine hundred eighty-six, but shall be

- 11 known and referred to as the state board of risk and insur-
12 ance management.

CHAPTER 66

(S. B. 454—By Mr. Susman)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state insurance commissioner; creating a commissioner's examination revolving fund; and provision for the Legislature to appropriate money to start the fund.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; commissioners examination revolving fund; access to books, records, etc.

- 1 (a) The commissioner or his accredited examiners
2 shall, at such times as he deems necessary, but at least
3 once every three years, visit each domestic insurer and
4 thoroughly examine its financial condition and methods
5 of doing business and ascertain whether it has complied
6 with all the laws and regulations of this state. The com-
7 missioner at such times as he deems necessary may
8 cause an examination to be conducted of any foreign or
9 alien insurer licensed to transact insurance in this state;
10 personnel conducting an examination of either a domestic
11 or foreign insurer shall be compensated for each day
12 worked at a rate set by the commissioner. Such personnel
13 shall also be reimbursed for their travel and living

14 expenses at the rate set by the commissioner. Personnel
15 who are appointed by the commissioner, but are not em-
16 ployees of the department of insurance, shall be compen-
17 sated for their work, and travel and living expenses at
18 rates approved by the commissioner, or as otherwise
19 provided by law. If the laws of another state require
20 or permit the insurance department or other authority
21 thereof to make examinations of insurance companies
22 of this state at the expense of such companies, the ex-
23 penses of the commissioner in making an examination
24 of an insurance company of such other state shall be
25 charged to and collected from such company in the man-
26 ner prescribed by the commissioner. The commissioner
27 shall provide each company with an itemized statement
28 of the expenses incurred in conducting the examination
29 and shall certify a copy of such statement to the treasurer
30 of the state. Upon receipt of the commissioner's state-
31 ment, the company shall remit the amount thereof to
32 the commissioner who shall remit that amount to the
33 treasurer of the state for deposit in the commissioner's
34 examination revolving fund. As used in this section
35 "expenses" means: (1) The entire compensation for each
36 day worked by all personnel, including those who are
37 not employees of the department of insurance, the con-
38 duct of such examination calculated as hereinbefore
39 provided; (2) travel and living expenses of all personnel,
40 including those who are not employees of the depart-
41 ment of insurance, directly engaged in the conduct of
42 such examination, calculated at the rates as hereinbefore
43 provided for; (3) all other incidental expenses incurred
44 by or on behalf of such personnel in the conduct of such
45 authorized examination. All moneys collected by the
46 commissioner of insurance for expenses incurred by him
47 in conducting examinations of the financial affairs of any
48 insurance company doing business in this state for
49 which such insurance company examined is required to
50 pay the costs, shall be paid to the commissioner and by
51 him paid to the treasurer of the state to the credit of a
52 special revolving fund to be known as the "commis-
53 sioner's examination revolving fund" which is hereby
54 established: *Provided*, That at the end of each fiscal year

55 should such fund contain a sum of money in excess of
56 one hundred thousand dollars then the amount of such
57 excess shall revert to and be placed in the general
58 revenue fund of this state. The Legislature may appropri-
59 ate moneys to start such rotary fund. Any funds ex-
60 pended or obligated therefrom by the commissioner shall
61 be expended or obligated solely for defrayment of the
62 costs of examinations of the financial affairs of insurance
63 companies made by the commissioner pursuant to this
64 section. For purposes of this section, "insurance com-
65 pany" includes any domestic or foreign stock company,
66 mutual company, mutual protective association, farmers
67 mutual fire companies, fraternal benefit society, reciprocal
68 or inter-insurance exchange, nonprofit medical care
69 corporation, nonprofit health care corporation, nonprofit
70 hospital service association, nonprofit dental care corpora-
71 tion, health maintenance organization, or other insurer,
72 regardless of the type of coverage written, benefits pro-
73 vided, or guarantees made by each. The commissioner
74 shall make a full written report of each such examina-
75 tion of an insurer, certified to by the commissioner or
76 the examiner in charge of such examination. The com-
77 missioner shall furnish a copy of the report to the in-
78 surer examined not less than ten days prior to filing the
79 same in his office. If such insurer so requests in writing,
80 within such ten-day period, the commissioner shall con-
81 sider the objections of such insurer to the report as
82 proposed, and shall not so file the report until after such
83 modifications, if any, have been made therein as the
84 commissioner deems proper. The report, when filed, shall
85 be admissible in evidence in any action or proceeding
86 brought by the commissioner against the insurer ex-
87 amined, or its officers or agents, and shall be prima
88 facie evidence of the facts stated therein. The commis-
89 sioner or his examiners may at any time testify and
90 offer other proper evidence as to information secured
91 during the course of an examination, whether or not a
92 written report of the examination has at that time been
93 either made, served or filed in the commissioner's office.
94 The examination of an alien insurer shall be limited
95 to its United States business. In lieu of making his own

96 examination, the commissioner may accept a full report
97 of the last recent examination of a foreign or alien in-
98 surer, certified to by the insurance supervisory official
99 of the state of domicile of a foreign insurer or the state
100 of entry into the United States of an alien insurer.

101 (b) The commissioner may also cause to be examined
102 at such times as he deems necessary the books, records,
103 papers, documents, correspondence and methods of doing
104 business of any agent, broker or solicitor licensed by
105 this state.

106 (c) For such purposes the commissioner, his deputies
107 and employees shall have free access to all books, records,
108 papers, documents and correspondence of all such in-
109 surers (whether domestic, foreign or alien), agents,
110 brokers and solicitors wherever such books, records,
111 papers, documents and records are situate.

112 (d) The commissioner may revoke the license of any
113 such insurer, agent, broker or solicitor who refuses to
114 submit to such examination.

115 (e) The commissioner may withhold from public in-
116 spection any examination or investigation report for such
117 time as he may deem prudent, but no such report shall
118 be withheld from public inspection for longer than ninety
119 days after the same has been filed.

CHAPTER 67

(S. B. 450—By Mr. Susman)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fourteen-c, relating to annual financial statement and premium tax return of certain insurers

transacting insurance in this state; payment of premium taxes by insurers; providing that insurers who were liable for more than five thousand dollars in premium taxes in the preceding year shall pay estimated taxes on a quarterly basis.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section fourteen-c, to read as follows:

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.

§33-3-14c. Computation of tax; payment.

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

1 Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day
3 of March, each year, a financial statement made under
4 oath of its president or secretary and on a form pre-
5 scribed by the commissioner. Such insurer shall also, on
6 or before the expiration of one month after the end of
7 the calendar year, subject to the provisions of section
8 fourteen-c of this article, under the oath of its president
9 or secretary, make a premium tax return for the previous
10 calendar year, on a form prescribed by the commissioner
11 showing the gross amount of direct premiums (whether
12 designated as a premium or by some other name) col-
13 lected and received by it during the previous calendar
14 year on policies covering risks resident, located or to be
15 performed in this state and compute the amount of
16 premium tax chargeable to it in accordance with the
17 provisions of this article, deducting the amount of quar-
18 terly payments as required to be made pursuant to the
19 provisions of section fourteen-c of this article, if any, less
20 any adjustments to the gross amount of such direct

21 premiums made during such calendar year, if any, and
22 transmit with such return to the commissioner a remit-
23 tance in full for the tax due. The tax shall be a sum equal
24 to two percent of the gross direct premiums, including
25 dividends (by whatever name called) on participating
26 policies applied in reduction of premiums, less premiums
27 returned to policyholders because of cancellation of
28 policies, and shall also include any additional tax due
29 under section fourteen-a of this section. All taxes received
30 by the commissioner shall be paid by him into the state
31 treasury for the benefit of the state fund.

§33-3-14c. Computation of tax; payment.

1 The taxes levied hereunder shall be due and payable in
2 quarterly installments on or before the expiration of one
3 month from the end of the quarter in which they accrue.
4 The insurer subject to making such payments shall,
5 within one month from the expiration of each quarter,
6 prepare an estimate of the tax based on the estimated
7 amount of taxable premiums during the preceding calen-
8 dar quarter, less adjustments to the gross amount of direct
9 premiums from the preceding quarter, sign the same by
10 its president or secretary, under oath, and mail the same
11 together with a remittance of the amount of tax to the
12 office of the commissioner.

13 Any insurer failing or refusing to pay estimated taxes
14 for more than thirty days after the time specified is liable
15 for a civil penalty of up to one hundred dollars for each
16 additional day of delinquency, to be assessed by the com-
17 missioner. Failure of an insurer to make quarterly payments,
18 if required, of at least one fourth of either the total tax
19 paid during the preceding calendar year or eighty percent
20 of the actual tax for the current calendar year is con-
21 sidered the same as a failure or refusal to pay the esti-
22 mated taxes and subjects the insurer to the penalties pro-
23 vided in this section. The amount of estimated taxes
24 and the penalties collected shall be paid to the commis-
25 sioner and he may suspend the insurer until estimated
26 taxes and penalty, should any penalty be imposed, are
27 fully paid.

CHAPTER 68

(S. B. 521—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited interests of officers and directors in certain transactions.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-17. Prohibited interests of officers and directors in certain transactions.

- 1 (a) No director or officer or an insurer shall accept,
2 except for and on behalf of the insurer, or be the bene-
3 ficiary of any fee, commission, brokerage, gift or other
4 emolument or thing of value in addition to his fixed
5 salary or compensation, because of any investment, loan,
6 deposit, purchase, sale, exchange, or other similar trans-
7 action made by or for the insurer, or be pecuniarily inter-
8 ested in any capacity except on behalf of the insurer.
- 9 (b) No insurer shall guarantee the financial obligation
10 of any of its officers or directors.
- 11 (c) This section shall not prohibit such a director or
12 officer from becoming a policyholder of the insurer and
13 enjoying thereunder the rights customarily provided
14 therein for holders of such policies, nor shall this section
15 prohibit a director or officer of an insurer from serving as
16 an agent or general agent of such insurer and receiving
17 regular established agency commissions therefor: *Pro-*
18 *vided,* That the contract between the insurer and its
19 officer and/or director has been approved by the board

20 of directors of the insurer and a true copy thereof, cer-
21 tified to by the secretary of the board of directors of such
22 insurer, has been filed with the commissioner of insurance;
23 nor shall this section prohibit such a director or officer
24 of an insurer from receiving his share of the commission
25 earnings of a stock exchange firm of which he is a partner,
26 or a percentage of underwriting profits under a manage-
27 ment contract: *Provided, however,* That such contract is
28 subject to review and termination by the board of direc-
29 tors, nor shall this section prohibit the payment to a direc-
30 tor or officer of a fee for legal services actually rendered to
31 any such insurer provided such compensation is not in ex-
32 cess of the amounts customarily charged for the same type
33 of service; nor shall this section prohibit an officer, in con-
34 nection with the relocation by the insurer of the place of
35 employment of such officer, including any relocation in
36 connection with the initial employment of such officer,
37 from (i) accepting a mortgage loan made by the insurer on
38 real property owned by such officer which is to serve as
39 such officer's residence or (ii) selling to the insurer, at not
40 more than the fair market value thereof, the residence of
41 such officer.

CHAPTER 69

(H. B. 1391—By Mr. Tompkins and Mr. Shiflet)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to advance notice of nonrenewal of an automobile liability or physical damage policy required; assigned risk policies; reasons for nonrenewal; renewal within ninety days of certain policies.

Be it enacted by the Legislature of West Virginia:

That section four, article six-a, chapter thirty-three of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

1 No insurer shall fail to renew an outstanding automobile
2 liability or physical damage insurance policy unless such
3 nonrenewal is preceded by at least forty-five days of advance
4 notice to the named insured of such insurer's election not to
5 renew such policy: *Provided*, That subject to this section,
6 nothing contained in this article shall be construed so as to
7 prevent an insurer from refusing to issue an automobile
8 liability or physical damage insurance policy upon application
9 to such insurer, nor shall any provision of this article be
10 construed to prevent an insurer from refusing to renew such
11 a policy upon expiration, except as to the notice requirements
12 of this section, and except further as to those applicants law-
13 fully submitted pursuant to the West Virginia assigned risk
14 plan: *Provided, however*, That an insurer may not fail to
15 renew an outstanding automobile liability or physical damage
16 insurance policy which has been in existence for two con-
17 secutive years or longer except for the following reasons:

18 (a) The named insured fails to discharge when due any
19 of his obligations in connection with the payment of premium
20 for such policy or any installment thereof;

21 (b) The policy was obtained through material misrep-
22 sentation;

23 (c) The insured violates any of the material terms and
24 conditions of the policy;

25 (d) The named insured or any other operator, either resi-
26 dent in the same household or who customarily operates an
27 automobile insured under such policy:

28 (1) Has had his operator's license suspended or revoked
29 during the policy period; or

30 (2) Is or becomes subject to epilepsy or heart attacks, and
31 such individual cannot produce a certificate from a physician
32 testifying to his ability to operate a motor vehicle;

33 (e) The named insured or any other operator, either resi-
34 dent in the same household or who customarily operates an
35 automobile insured under such policy is convicted of or for-
36 feits bail during the policy period for any of the following:

37 (1) Any felony or assault involving the use of a motor
38 vehicle;

39 (2) Negligent homicide arising out of the operation of a
40 motor vehicle;

41 (3) Operating a motor vehicle while under the influence
42 of intoxicating liquor or of any narcotic drug;

43 (4) Leaving the scene of a motor vehicle accident in which
44 the insured is involved without reporting as required by law;

45 (5) Theft of a motor vehicle or the unlawful taking of a
46 motor vehicle;

47 (6) Making false statements in an application for a motor
48 vehicle operator's license; or

49 (7) A second violation, committed within a period of
50 twelve months, of any moving traffic violation which con-
51 stitutes a misdemeanor, whether or not the violations were
52 repetitions of the same offense or were different offenses;

53 (f) The named insured or any other operator has had a
54 second at-fault motor vehicle accident within a period of
55 twelve months.

56 Nonrenewal of such policy for any reason is subject to
57 hearing and review as provided in section five of this article.
58 Cost of the hearing shall be assessed against the losing party
59 but shall not exceed seventy-five dollars.

60 Notwithstanding the provisions of subsection (a) of this
61 section, the insurer shall renew any automobile liability or
62 physical damage insurance policy that has not been renewed
63 due to the insured's failure to pay the renewal premium when

64 due, if none of the other grounds for nonrenewal as set forth
65 in subsections (b) through (f) of this section exist and the
66 insured makes application for renewal within ninety days of
67 the original expiration date of the policy. If a policy be re-
68 newed as provided in this paragraph, the coverage afforded
69 shall not be retroactive to the original expiration date of the
70 policy, but shall resume upon the renewal date at the current
71 premium levels offered by the company.

CHAPTER 70

(Com. Sub. for H. B. 980—By Mrs. Spears and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-b; and to amend article twenty-eight of said chapter by adding thereto a new section, designated section five-a, all relating to requiring individual and group basic hospital expense and major medical expense insurers to offer home health care coverage; defining "home health care"; and providing requirements for and optional limits on services provided under such coverage.

Be it enacted by the Legislature of West Virginia:

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

Article

16. Group Accident and Sickness Insurance.

28. Individual Accident and Sickness Insurance Minimum Standards.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**§33-16-3b. Home health care coverage.**

1 (a) Any insurer who, on or after the first day of January,
2 one thousand nine hundred eighty-one, delivers or issues
3 for delivery in this state group basic hospital expense or
4 major medical expense coverage under this article shall
5 make available to the policyholder home health care coverage
6 consistent with the provisions of this section. For purposes
7 of this section, "home health care" means health services
8 provided by a home health agency certified in the state in
9 which the home health services are delivered or under Title
10 XVIII of the Social Security Act.

11 (b) Home health care coverage offered shall include:

12 (1) Services provided by a registered nurse or a licensed
13 practical nurse;

14 (2) Health services provided by physical, occupational,
15 respiratory and speech therapists;

16 (3) Health services provided by a home health aide to
17 the extent that such services would be covered if provided to
18 the insured on an inpatient basis;

19 (4) Medical supplies, drugs, medicines and laboratory
20 services to the extent that they would be covered if provided
21 to the insured on an inpatient basis; and

22 (5) Services provided by a licensed midwife or a licensed
23 nurse midwife as these occupations are defined in section one,
24 article fifteen, chapter thirty of the code.

25 (c) Home health care coverage may be limited to:

26 (1) Services provided on the written order of a licensed
27 physician, provided such order is renewed at least every
28 sixty days;

29 (2) Services provided, directly or through contractual
30 agreements, by a home health agency certified in the state
31 in which the home health services are rendered or under
32 Title XVIII of the Social Security Act; and

33 (3) Services as set forth in subsection (b) of this section
34 without which the insured would have to be hospitalized.

35 (d) Coverage under this section shall be provided for at
36 least one hundred home visits per insured per policy year,
37 with each home visit by a member of a home health care
38 team to be considered as one home health care visit including
39 up to four hours of home health care services.

40 (e) No such policy need provide such coverage to persons
41 eligible for medicare.

**ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE
MINIMUM STANDARDS.**

§33-28-5a. Home health care coverage.

1 (a) Any insurer who, on or after the first day of January,
2 one thousand nine hundred eighty-one, delivers or issues for
3 delivery in this state individual basic hospital expense or major
4 medical expense coverage shall make available to the policy-
5 holder home health care coverage consistent with the provisions
6 of this section. For purposes of this section, "home health
7 care" means health services provided by a home health agency
8 certified in the state in which the home health services are
9 delivered or under Title XVIII of the Social Security Act.

10 (b) Home health care coverage offered shall include:

11 (1) Services provided by a registered nurse or a licensed
12 practical nurse;

13 (2) Health services provided by physical, occupational,
14 respiratory and speech therapists;

15 (3) Health services provided by a home health aide to
16 the extent that such services would be covered if provided
17 to the insured on an inpatient basis;

18 (4) Medical supplies, drugs, medicines and laboratory
19 services to the extent that they would be covered if provided
20 to the insured on an inpatient basis; and

21 (5) Services provided by a licensed midwife or a licensed
22 nurse midwife as these occupations are defined in section one,
23 article fifteen, chapter thirty of the code.

- 24 (c) Home health care coverage may be limited to:
- 25 (1) Services provided on the written order of a licensed
26 physician, provided such order is renewed at least every
27 sixty days;
- 28 (2) Services provided, directly or through contractual
29 agreements, by a home health agency certified in the state
30 in which the home health services are delivered or under
31 Title XVIII of the Social Security Act; and
- 32 (3) Services as set forth in subsection (b) of this section
33 without which the insured would have to be hospitalized.
- 34 (d) Coverage under this section shall be provided for at
35 least one hundred home visits per insured per policy year, with
36 each home visit by a member of a home health care team to be
37 considered as one home health care visit including up to four
38 hours of home health care services.
- 39 (e) No such policy need provide such coverage to persons
40 eligible for medicare.

CHAPTER 71

(S. B. 198—By Mr. Galperin)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to medical service corporations; composition of board of directors.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-2. Definitions.

1 For the purpose of this article:

2 (a) "Corporation" shall mean either a hospital service
3 corporation, a medical service corporation or a dental
4 service corporation.

5 (b) "Hospital service corporation" shall mean a non-
6 profit, nonstock corporation, organized in accordance
7 with the provisions of article one, chapter thirty-one of
8 this code, for the sole purpose of contracting with the
9 public and with hospitals and other health agencies for
10 hospital or other health services to be furnished to sub-
11 scribers under terms of their contract with the corpora-
12 tion.

13 (c) "Hospital service" shall mean only such hospital or
14 other health care, to be provided by hospitals or other
15 health agencies, or such payment therefor, as may be
16 specified in the contract made by the subscriber with the
17 corporation.

18 (d) "Medical service corporation" shall mean a non-
19 profit, nonstock corporation, organized in accordance with
20 the provisions of article one, chapter thirty-one of this
21 code, for the sole purpose of contracting with the public
22 and with duly licensed physicians, duly licensed dentists
23 and duly licensed chiropodists-podiatrists for medical
24 or surgical services and with duly licensed chiroprac-
25 tors and other health agencies for other health services
26 to be furnished to subscribers under terms of their con-
27 tract with the corporation, and controlled by a board of
28 directors, not more than twenty percent of whom, or
29 whose spouse, parent, child, brother or sister by blood or
30 marriage, are engaged in the providing of health care
31 and at least eighty percent of whom shall be chosen as
32 representatives of the interests of consumers, elderly
33 persons, organized labor and business subscribers.

34 (e) "Medical service" shall mean only such medical,

35 surgical, or other health care, to be provided by duly
36 licensed physicians, duly licensed dentists, duly licensed
37 chiropodists-podiatrists or other health agencies and only
38 such health care, to be provided by duly licensed chiro-
39 practors, or such payment therefor, as may be specified
40 in the contract made by the subscriber with the corpora-
41 tion.

42 (f) "Dental service corporation" shall mean a nonprofit,
43 nonstock corporation, organized in accordance with the
44 provisions of article one, chapter thirty-one of this code,
45 for the sole purpose of contracting with the public and
46 with duly licensed dentists for dental services to be fur-
47 nished to subscribers under terms of their contracts with
48 the corporations, and controlled by a board of directors,
49 the majority of whom are duly licensed dentists.

50 (g) "Dental service" shall mean only such dental care,
51 to be provided by duly licensed dentists, duly licensed
52 physicians, or such payment therefor, as may be specified
53 in the contract made by the subscriber with the corpora-
54 tion.

55 (h) "Service" shall mean such hospital, medical, dental
56 or other health service as shall be provided under the
57 terms of the contracts issued by the corporation to sub-
58 scribers.

59 (i) "Commissioner" shall mean the insurance commis-
60 sioner of West Virginia.

CHAPTER 72

(H. B. 1366—By Mr. Tucker)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred one, one hundred two and one hundred four, article three, chapter forty-six-

a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one hundred seventeen, all relating to sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes; sales finance charges for certain consumer credit sales of real estate; loan finance charges for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charges on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located; alternative finance charges authorized.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

- §46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes.
- §46A-3-102. Sales finance charge for certain consumer credit sales of real estate.
- §46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located.
- §46A-3-117. Alternative finance charges authorized.

§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes.

1 (1) With respect to a consumer credit sale, other than a
2 sale of real estate subject to the provisions of section one
3 hundred two of this article or a sale pursuant to a revolving
4 charge account, a seller may contract for and receive a sales
5 finance charge not exceeding eighteen percent per year on
6 that part of the unpaid balance of the amount financed which
7 is fifteen hundred dollars or less and twelve percent per year
8 on that part of the unpaid balances of the amount financed
9 which is in excess of fifteen hundred dollars, calculated ac-
10 cording to the actuarial method.

11 (2) This section does not limit or restrict the manner of
12 calculating the sales finance charge, whether by way of add-on,
13 discount, or otherwise, so long as the rate of the sales finance
14 charge does not exceed that permitted by this section. If the
15 sale is precomputed:

16 (a) The sales finance charge may be calculated on the as-
17 sumption that all scheduled payments will be made when due;
18 and

19 (b) The effect of prepayment, refinancing or consolidation
20 is governed by the provisions on rebate upon prepayment, re-
21 financing or consolidation, contained in section one hundred
22 eleven of this article.

23 (3) For the purposes of this section, the term of a sale
24 agreement commences on the date the credit is granted or, if
25 goods are delivered or services performed ten days or more
26 after that date, with the date of commencement of delivery or
27 performance. Differences in the lengths of months are disre-
28 garded and a day may be counted as one thirtieth of a month.
29 Subject to classifications and differentiations the seller may
30 reasonably establish, a part of a month in excess of fifteen
31 days may be treated as a full month if periods of fifteen days or
32 less are disregarded and if that procedure is not consistently

33 used to obtain a greater yield than would otherwise be per-
34 mitted.

35 (4) Subject to classifications and differentiations the seller
36 may reasonably establish, he may make the same sales finance
37 charge on all amounts financed within a specified range. A
38 sales finance charge so made does not violate subsection (1) if:

39 (a) When applied to the median amount within each range,
40 it does not exceed the maximum permitted by subsection (1);
41 and

42 (b) When applied to the lowest amount within each range,
43 it does not produce a rate of sales finance charge exceeding the
44 rate calculated according to subdivision (a) by more than eight
45 percent of the rate calculated according to subdivision (a).

46 (5) Notwithstanding subsection (1), the seller may con-
47 tract for and receive a minimum sales finance charge of not
48 more than five dollars when the amount financed does not
49 exceed seventy-five dollars, or seven dollars and fifty cents
50 when the amount financed exceeds seventy-five dollars.

51 (6) Notwithstanding any provision of this section to the
52 contrary, with respect to a consumer credit sale involving a
53 motor vehicle or a mobile home or a consumer credit sale from
54 the same seller of both a mobile home and the real estate upon
55 which such mobile home is or will be located, or a consumer
56 credit sale of a mobile home where a security interest in real
57 estate owned by the buyer is given to the seller as collateral, a
58 seller may from the effective date of this section and until
59 and including the fifteenth day of April, one thousand nine
60 hundred eighty-one, contract for and receive a sales finance
61 charge not exceeding eighteen percent per year on the unpaid
62 balance calculated according to the actuarial method: *Pro-*
63 *vided,* That the quantity of real estate involved with the con-
64 sumer credit sale of a mobile home upon which such finance
65 charge is contracted for and received shall not exceed one
66 acre.

**§46A-3-102. Sales finance charge for certain consumer credit sales
of real estate.**

1 With respect to a consumer credit sale of real estate, other

2 than a sale involving a mobile home and real estate as referred
3 to in section one hundred one of this article or goods which
4 become fixtures, where title is retained or there is created or
5 retained by agreement a purchase money lien against the real
6 estate, the seller may contract for and receive a sales finance
7 charge not exceeding the interest permitted by section five,
8 article six, chapter forty-seven of this code.

9 In addition to the sales finance charge permitted by this
10 section with respect to such sale, a seller may also contract
11 for and receive additional charges, delinquency charges, and
12 deferral charges and compute rebates upon prepayment, re-
13 financing or consolidation as defined and authorized by this
14 chapter.

§46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located.

1 (1) With respect to a consumer loan, other than a consumer
2 loan made pursuant to a revolving loan account, (a) a bank,
3 as defined in section two, article one, chapter thirty-one-a of
4 this code, may contract for and receive a loan finance charge
5 not exceeding the charge or interest permitted by the provi-
6 sions of section thirty, article four, chapter thirty-one-a or by
7 the provisions of section five, section five-a, or section five-b,
8 article six, chapter forty-seven of this code, (b) an industrial
9 loan company, as defined in section three, article seven, chap-
10 ter thirty-one of this code, may contract for and receive a
11 loan finance charge not exceeding the aggregate of the interest
12 and charges permitted by subdivisions (5) and (6), subsection
13 (a), section eleven, article seven, chapter thirty-one of this
14 code or by the provisions of section five, article six, chapter
15 forty-seven of this code, (c) a building and loan association,
16 as defined in section two, article six, chapter thirty-one of this
17 code, may contract for and receive a loan finance charge not
18 exceeding the charge or interest permitted by the provisions of

19 section seventeen, article six, chapter thirty-one of this code,
20 or by the provisions of section five, article six, chapter forty-
21 seven of this code, (d) a credit union, as defined in section
22 one, article ten, chapter thirty-one of this code, may contract
23 for and receive a loan finance charge not exceeding the charge
24 or interest permitted by the provisions of section sixteen, article
25 ten, chapter thirty-one of this code, or by the provisions of
26 section five, article six, chapter forty-seven of this code, and
27 (e) any other lender, other than a supervised lender, may
28 contract for and receive a loan finance charge not exceeding
29 the charge or interest permitted by the provisions of section
30 five, section five-a or section five-b, article six, chapter forty-
31 seven of this code.

32 (2) Notwithstanding any provision of this section to the
33 contrary, with respect to a consumer loan involving a motor
34 vehicle or a mobile home or with respect to a consumer loan
35 to finance the sale from one seller of both a mobile home and
36 the real estate upon which such mobile home is or will be
37 located, or with respect to a consumer loan where a security
38 interest in real estate owned by the borrower is given to the
39 lender as collateral for such loan, a lender may from the
40 effective date of this section and until and including the fif-
41 teenth day of April, one thousand nine hundred eighty-one,
42 contract for and receive a loan finance charge not exceeding
43 eighteen percent per year on the unpaid balance calculated ac-
44 cording to the actuarial method: *Provided*, That the quantity
45 of real estate involved in such consumer loan transactions in-
46 volving a mobile home and real estate where such finance
47 charge is contracted for and received shall not exceed one acre.

48 (3) If the loan is precomputed:

49 (a) The loan finance charge may be calculated on the as-
50 sumption that all scheduled payments will be made when due,
51 and

52 (b) The effect of prepayment, refinancing or consolidation
53 is governed by the provisions on rebate upon prepayment, re-
54 financing or consolidation contained in section one hundred
55 eleven of this article.

56 (4) Notwithstanding subsection (1), the lender may con-

57 tract for and receive a minimum loan finance charge of not
58 more than five dollars when the amount loaned does not ex-
59 ceed seventy-five dollars, or seven dollars and fifty cents when
60 the amount loaned exceeds seventy-five dollars.

61 (5) An assignee of a consumer credit sale contract may
62 collect, receive or enforce the sales finance charge provided
63 in said contract, and any such charge so collected, received
64 or enforced by an assignee shall not be deemed usurious or in
65 violation of this chapter or any other provision of this code if
66 such sales finance charge does not exceed the limits permitted
67 to be charged by a seller under the provisions of this chapter.

§46A-3-117. Alternative finance charges authorized.

1 Notwithstanding any other provisions of this chapter, a per-
2 son making any sale or loan subject to the provisions of this
3 chapter, may charge a sales finance charge, loan finance charge
4 or rate of interest for such sale or loan not exceeding the
5 charge or interest permitted by the provisions of section thirty-
6 a, article four, chapter thirty-one-a or section five-b, article
7 six, chapter forty-seven of this code for the loan of money, or
8 permitted by the provisions of section five-c, article six, chapter
9 forty-seven of this code for the forbearance of money, or the
10 appropriate rate authorized by this chapter for such sale or
11 loan, whichever is greater.

CHAPTER 73

(S. B. 535—By Mr. Ward)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred five, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitations upon interest rates on loans and consumer credit sales guaranteed or insured by the United States or its agencies.

Be it enacted by the Legislature of West Virginia:

That section one hundred five, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-105. Maximum rate on loans and credit sales guaranteed or insured by United States or agency thereof.

1 Nothing contained in this chapter or other law of this
2 state shall be taken or construed as limiting the permis-
3 sible interest rates or finance charges upon loans or credit
4 sales evidenced by notes, bonds or other obligations
5 secured by mortgages, deeds of trust or other security
6 instruments insured or guaranteed by the federal
7 housing commissioner or United States administrator
8 of veterans' affairs or by any other officer, department,
9 agency or instrumentality of the United States or evi-
10 denced by notes, bonds, debentures and other obligations
11 and securities issued by, insured by or guaranteed by the
12 federal housing commissioner, federal national mortgage
13 association, government national mortgage association,
14 small business administration or other federal officer,
15 department, agency or instrumentality.

CHAPTER 74

(Com. Sub. for H. B. 760—By Mr. Hendricks)

[Passed February 13, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three; and to amend article five, chapter sixty-one of said code, by adding thereto a new section, designated section twenty-five-a, re-

lating to discriminating against an employee summoned for jury duty; creating a civil cause of action for such discrimination; making it unlawful to discriminate against an employee summoned for jury duty; and providing criminal penalties for unlawful discrimination.

Be it enacted by the Legislature of West Virginia:

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

Chapter

52. Juries.

61. Crimes and Their Punishment.

CHAPTER 52. JURIES.

ARTICLE 3. DISCRIMINATION FOR JURY SERVICE.

§52-3-1. Right of action for discrimination against employee summoned for jury duty.

1 (a) Any person who, as an employee, is discriminated
2 against by his employer because such employee received, or
3 was served with a summons for jury duty, or was absent from
4 work to respond to a summons for jury duty or to serve on
5 any jury in any court of this state, the United States or any
6 state of the United States, shall have an action against his
7 employer in the circuit court of the county where the jury
8 summons originated or where the discrimination occurred. If
9 the circuit court finds that an employer terminated or threat-
10 ened to terminate from employment, or decreased the regular
11 compensation of employment of an employee for time the em-
12 ployee was not actually away from his employment because
13 the employee served as a juror, the court may order the
14 employer to cease and desist from this unlawful practice and
15 order affirmative relief, including, but not limited to, rein-
16 statement of the employee with or without back pay, and
17 reasonable attorney's fees as may be determined by the court,
18 as will effectuate the purposes of this section.

19 (b) Nothing in this section shall be construed to require
20 an employer to pay an employee any wages or other compen-
21 sation for the time the employee is actually away from his
22 employment for jury services or to respond to a jury summons.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-25a. Discrimination against employee summoned for jury duty; penalty.

1 It is unlawful for any person to terminate or threaten to
2 terminate from employment, or decrease the regular compensa-
3 tion of employment of an employee for time the employee was
4 not actually away from his employment because an employee
5 received, or was served with a summons for jury duty, or was
6 absent from work to respond to a summons for jury duty or to
7 serve on any jury in any court of this state, the United States
8 or any state of the United States.

9 Any person violating the provisions of this section shall
10 be guilty of a misdemeanor, and, upon conviction, shall be
11 fined not less than one hundred dollars nor more than one
12 thousand dollars, or imprisoned in the county jail not more
13 than sixty days, or both fined and imprisoned.

CHAPTER 75

(H. B. 1601—By Mr. Wiedebusch and Mr. Cook)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duration of the West Virginia labor-management advisory council extended.

Be it enacted by the Legislature of West Virginia:

That section three, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. WEST VIRGINIA LABOR-MANAGEMENT ADVISORY COUNCIL.**§21-1C-3. Duration of council.**

- 1 Unless sooner terminated by law and until and unless
- 2 extended, the West Virginia labor-management advisory coun-
- 3 cil shall cease to exist on the thirtieth day of June, one thou-
- 4 sand nine hundred eighty-three.

CHAPTER 76

(S. B. 76--By Mr. Brotherton, Mr. President)

[Passed March 6, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to officers and employees of the Legislature; providing that officers of any political party executive committee may not serve as clerk of either house.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICERS; MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-8. Officers and employees; tenure.

- 1 Each house of the Legislature shall, at the commence-
- 2 ment of the regular session thereof assembled and held in
- 3 odd-numbered years, elect a presiding officer, a clerk, a
- 4 sergeant at arms and a doorkeeper, whose terms of office
- 5 shall, unless sooner vacated by death, resignation or
- 6 removal, be and continue until the regular meeting of the

7 Legislature in the odd-numbered year next thereafter,
8 and until their successors are elected and qualified. Any
9 person who is an officer of any state, county, district
10 or municipal political party executive committee shall
11 not be eligible to serve as clerk of either house of the
12 Legislature. The clerk of each house shall devote full
13 time to his public duties to the exclusion of any other
14 employment. At each session of the Legislature, there
15 shall be appointed for each house such employees and
16 technical assistants as may be authorized by law or by
17 resolution of the respective houses. Any person so ap-
18 pointed may be removed by the appointing authority and
19 another appointed in his stead: *Provided*, That nothing
20 in this section shall be construed to prevent either house
21 from removing any appointee.

CHAPTER 77

(Com. Sub. for S. B. 106—By Mr. Brotherton, Mr. President)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vacancies in clerkships in the Senate or House of Delegates; appointment by the president of the Senate for a vacancy in the office of clerk of the Senate, and by the speaker of the House of Delegates for a vacancy in the office of clerk of the House of Delegates.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-11. Vacancies in clerkships.

1 A vacancy in the office of clerk of the Senate or clerk
2 of the House of Delegates, happening when the Legisla-
3 ture is not in session, shall be filled by appointment by
4 the president of the Senate for a vacancy occurring in the
5 office of clerk of the Senate and by the speaker of the
6 House of Delegates for a vacancy occurring in the office
7 of clerk of the House of Delegates, to expire at the meeting
8 of the next regular or extraordinary session of the Legis-
9 lature. If any such vacancy happen when the Legislature
10 is in session, it shall be filled in the same manner as is
11 provided for the election of such officer at the commence-
12 ment of each regular session.

CHAPTER 78

(S. B. 356—By Mr. Brotherton, Mr. President)

[Passed March 8, 1980: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article five, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and changing the name of the state purchasing practices and procedures commission to the state "commission on special investigations"; expanding the powers of said commission to permit investigations for violations of criminal or civil statutes at any level of state government; allowing personnel of said commission to administer oaths and take affidavits and depositions within the state; providing for referring matters to and cooperating with the United States attorney; and generally broadening the powers and duties of said commission to

investigate and take actions upon certain violations of state law.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article five, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission continued as "commission on special investigations"; composition; appointment and terms of members.

§4-5-2. Powers and duties generally.

§4-5-1. Commission continued as "commission on special investigations"; composition; appointment and terms of members.

1 The purchasing practices and procedures commission,
2 heretofore created, shall continue in existence but on
3 and after the effective date of this section shall be named
4 and designated the "commission on special investiga-
5 tions." The commission shall continue to be composed
6 of five members of the Senate, to be appointed by the
7 president thereof, no more than three of whom shall be
8 appointed from the same political party, and five mem-
9 bers of the House of Delegates, to be appointed by the
10 speaker thereof, no more than three of whom shall be
11 appointed from the same political party. The commis-
12 sion shall be headed by two cochairmen, one to be selected
13 by and from the members appointed from the Senate,
14 and one to be selected by and from the members appointed
15 from the House of Delegates. All members of the commis-
16 sion shall serve until their successors shall have been
17 appointed as heretofore provided.

§4-5-2. Powers and duties generally.

1 The commission on special investigations shall have
2 the power, duty and responsibility, upon a majority vote
3 of the members appointed, to:

4 (1) Conduct a comprehensive and detailed investiga-
5 tion into the purchasing practices and procedures of
6 the state;

7 (2) Determine if there is reason to believe that the
8 laws or public policy of the state in connection with
9 purchasing practices and procedures have been violated
10 or are inadequate;

11 (3) Determine if any criminal or civil statutes relating
12 to the purchasing practices and procedures in this state
13 are necessary to protect and control the expenditures
14 of money by the state;

15 (4) Investigate or examine any matter involving con-
16 flicts of interest, bribery of state officials, malfeasance,
17 misfeasance or nonfeasance in office by any employee
18 or officer of the state;

19 (5) Conduct comprehensive and detailed investiga-
20 tions to determine if any criminal or civil statutes have
21 been violated at any level of state government;

22 (6) Determine whether to recommend criminal prose-
23 cution or civil action for any violation, either criminal
24 or civil, at any level of state government and, if it is
25 determined that action is necessary, to make appropriate
26 recommendation to the attorney general, prosecuting
27 attorney or other authority empowered to act on such
28 recommendation; and

29 (7) Make such written reports to the members of the
30 Legislature between sessions thereof as the commission
31 may deem advisable and on the first day of each regular
32 session of the Legislature make an annual report to
33 the Legislature containing the commission's findings and
34 recommendations including in such report drafts of any
35 proposed legislation which it deems necessary to carry
36 such recommendations into effect.

37 The commission is also expressly empowered and
38 authorized to:

39 (1) Sit during any recess of the Senate and House of
40 Delegates;

41 (2) Recommend to the judge of any circuit court
42 that a grand jury be convened pursuant to the provisions
43 of section fourteen, article two, chapter fifty-two of this

44 code, to consider any matter which the commission may
45 deem in the public interest and, in support thereof,
46 make available to such court and such grand jury the
47 contents of any reports, files, transcripts of hearings or
48 other evidence pertinent thereto;

49 (3) Employ such legal, technical, investigative, clerical,
50 stenographic, advisory and other personnel as it
51 deems needed and, within the appropriation herein
52 specified, fix reasonable compensation of such persons
53 and firms as may be employed: *Provided*, That such
54 personnel as the commission may determine shall have
55 the authority to administer oaths and take affidavits and
56 depositions anywhere in the state;

57 (4) Consult and confer with all persons and agencies,
58 public (whether federal, state or local) and private, that
59 have information and data pertinent to an investigation;
60 and all state and local governmental personnel and
61 agencies shall cooperate to the fullest extent with the
62 commission;

63 (5) Call upon any department or agency of state or
64 local government for such services, information and as-
65 sistance as it may deem advisable; and

66 (6) Refer such matters as are appropriate to the
67 office of the United States attorney and cooperate with
68 such office in the disposition of matters so referred.

CHAPTER 79

(Com. Sub. for H. B. 877—By Mr. Greer)

[Passed January 23, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vendor's liens and deed of trust liens generally; notice by publication of the trustee

sale pursuant to deeds of trust and prohibiting the waiver of such publication of notice.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-4. Notice of sale.

1 Unless property is to be sold under a deed of trust executed
2 and delivered prior to the first day of July, one thousand nine
3 hundred eighty, which contains a provision waiving the re-
4 quirement of published notice, or the property to be sold is in
5 the opinion of the trustee of less value than three hundred
6 dollars, the trustee shall publish a notice of such sale as a
7 Class III legal advertisement in compliance with the provisions
8 of article three, chapter fifty-nine of this code, and the publi-
9 cation area for such publication shall be the county where the
10 property is located. If, in the opinion of the trustee, the prop-
11 erty be of less value than three hundred dollars, such notice
12 of sale shall be posted at least twenty days prior thereto at
13 the front door of the courthouse of the county in which the
14 property to be sold is, and three other public places at least
15 in the county, one of which shall be as near as the premises to
16 be sold (in case the sale be of real estate) as practicable; and
17 in all cases whether the notice be published or not, a copy of
18 such notice shall be served on the grantor in such trust deed,
19 or his agent or personal representative, if he or they be within
20 the county, at least twenty days prior to the sale, unless
21 service of such notice be expressly waived by the grantor in
22 any such trust deed. Every notice of sale by a trustee under a
23 trust deed shall show the following particulars: (a) The time
24 and place of sale; (b) the names of the parties to the deed under
25 which it will be made; (c) the date of the deed; (d) the office
26 and book in which it is recorded; (e) the quantity and descrip-
27 tion of the land or other property, or both, conveyed thereby;
28 and (f) the terms of sale: *Provided*, That except as expressly
29 provided in this section, no trust deed shall waive the require-
30 ments of publication of notice as required by this section.

CHAPTER 80

(Com. Sub. for H. B. 1334—By Mr. Chambers)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, eight, nine and eleven, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing for an additional magistrate to be elected in Putnam and Raleigh Counties; increased compensation for magistrates, magistrate court clerks, magistrate assistants and magistrate court deputy clerks; providing for salaries and maximum salary levels to be paid on a population basis; and providing for travel expenses for magistrates traveling between offices.

Be it enacted by the Legislature of West Virginia:

That sections two, three, eight, nine and eleven, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

§50-1-3. Salary of magistrates.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-11. Offices for magistrates; location; expenses; copy of state code.

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in popu-
2 lation there shall be elected two magistrates; except that in
3 the county of Putnam there shall be elected three magistrates.
4 In each county which has thirty thousand or more in popula-
5 tion but less than sixty thousand in population there shall be
6 elected three magistrates; except that in the county of McDowell
7 there shall be elected four magistrates. In each county which
8 has sixty thousand or more in population but less than one
9 hundred five thousand in population there shall be elected four
10 magistrates; except that in the county of Raleigh there shall be
11 elected five magistrates. In each county which has one hundred

12 five thousand or more in population but less than two hundred
13 thousand in population there shall be elected seven magis-
14 trates. In each county which has two hundred thousand or
15 more in population there shall be elected ten magistrates. For
16 the purpose of this article, the population of each county shall
17 be considered to be the population as determined by the last
18 preceding census taken under the authority of the United States
19 government. No change in the number of magistrates caused
20 by the publication of more recent such census figures shall be
21 effective until the next regular election for such office occur-
22 ring after the year of such publication.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the state. Be-
2 ginning on the first day of July, one thousand nine hundred
3 eighty, magistrates who serve less than ten thousand in popu-
4 lation shall be paid annual salaries of fourteen thousand dol-
5 lars; magistrates who serve ten thousand or more in population
6 but less than fifteen thousand in population shall be paid
7 annual salaries of seventeen thousand dollars: *Provided*, That
8 magistrates in the county of Putnam shall be paid annual
9 salaries of seventeen thousand dollars. Magistrates who serve
10 fifteen thousand or more in population shall be paid annual
11 salaries of twenty-one thousand dollars: *Provided, however*,
12 That magistrates in the county of Raleigh shall be paid annual
13 salaries of twenty-one thousand dollars. For the purpose of
14 determining the population served by each magistrate, the
15 number of magistrates authorized for each county shall be
16 divided into the population of each county. Magistrates shall
17 be paid once a month.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

1 In each county having three or more magistrates the judge
2 of the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall appoint a magistrate
4 court clerk. In all other counties such judge may appoint a
5 magistrate court clerk or may by rule require the duties of the
6 magistrate court clerk to be performed by the clerk of the cir-
7 cuit court, in which event said circuit court clerk shall be en-
8 titled to additional compensation in the amount of two thou-

9 sand five hundred dollars per year. In any county a magistrate
10 court clerk may be appointed prior to the first day of January,
11 one thousand nine hundred seventy-seven. The magistrate
12 court clerk shall serve at the will and pleasure of such circuit
13 judge.

14 Magistrate court clerks shall be paid a monthly salary by the
15 state. Beginning on the first day of July, one thousand nine
16 hundred eighty, magistrate court clerks serving magistrates who
17 serve five thousand or less in population shall be paid up to
18 six hundred twenty dollars per month; magistrate court clerks
19 serving magistrates who serve more than five thousand in popu-
20 lation but less than ten thousand in population shall be paid up
21 to seven hundred ninety-eight dollars per month; magistrate
22 court clerks serving magistrates who serve more than ten thou-
23 sand in population but less than fifteen thousand in population
24 shall be paid up to one thousand twenty-six dollars per month;
25 and magistrate court clerks serving magistrates who serve fif-
26 teen thousand or more in population shall be paid up to one
27 thousand two hundred fifty-four dollars per month. For the
28 purpose of determining the population served by each magis-
29 trate, the number of magistrates authorized for each coun-
30 ty shall be divided into the population of each county. The
31 salary of the magistrate court clerk shall be established by
32 the judge of the circuit court, or the chief judge thereof if
33 there is more than one judge of the circuit court, within the
34 limits set forth in this section.

35 In addition to other duties as may be imposed by the pro-
36 visions of this chapter or by the rules of the supreme court of
37 appeals or the judge of the circuit court, or the chief judge
38 thereof if there is more than one judge of the circuit court, it
39 shall be the duty of the magistrate court clerk to establish and
40 maintain appropriate dockets and records in a centralized
41 system for the magistrate court, to assist in the preparation
42 of such reports as may be required of the court and to carry
43 out on behalf of the magistrates, or chief magistrate if a chief
44 magistrate is appointed, the administrative duties of the court.

45 The magistrate court clerk or, if there is no magistrate court
46 clerk in the county, the clerk of the circuit court shall have
47 the authority to issue all manner of civil process and to re-

48 quire the enforcement of subpoenas and subpoenas duces
49 tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant for
2 each magistrate. Each magistrate assistant shall be appointed
3 by the magistrate under whose authority and supervision and
4 at whose will and pleasure he shall serve. Such assistant shall
5 not be a member of the immediate family of any magistrate and
6 shall not have been convicted of a felony or any misdemeanor
7 involving moral turpitude and shall reside in the county where
8 appointed. For the purpose of this section, immediate family
9 shall mean the relationships of mother, father, sister, brother,
10 child or spouse.

11 A magistrate assistant shall have such duties, clerical or
12 otherwise, as may be assigned by the magistrate and as may be
13 prescribed by the rules of the supreme court of appeals or the
14 judge of the circuit court, or the chief judge thereof if there
15 is more than one judge of the circuit court. In addition to these
16 duties, magistrate assistants shall perform and be accountable
17 to the magistrate court clerk with respect to the following du-
18 ties:

19 (1) The preparation of summons in civil actions;

20 (2) The assignment of civil actions to the various mag-
21 istrates;

22 (3) The collection of all costs, fees, fines, forfeitures and
23 penalties which may be payable to the court;

24 (4) The submission of such moneys, along with an account-
25 ing thereof to appropriate authorities as provided by law;

26 (5) The daily disposition of closed files which are to be
27 located in the magistrate clerk's office;

28 (6) All duties related to the gathering of information and
29 documents necessary for the preparation of administrative re-
30 ports and documents required by the rules of the supreme court
31 of appeals or the judge of the circuit court, or the chief judge
32 thereof if there is more than one judge of the circuit court;

33 (7) All duties relating to the notification, certification and
34 payment of jurors serving pursuant to the terms of this chapter;

35 (8) All other duties or responsibilities whereby the magis-
36 trate assistant shall be accountable to the magistrate court
37 clerk as the magistrate shall determine.

38 Magistrate assistants shall be paid a monthly salary by the
39 state. Beginning on the first day of July, one thousand nine
40 hundred eighty, magistrate assistants serving magistrates who
41 serve five thousand or less in population shall be paid up to
42 five hundred six dollars per month; magistrate assistants serv-
43 ing magistrates who serve more than five thousand in popu-
44 lation but less than ten thousand in population shall be paid up
45 to six hundred twenty-seven dollars per month; magistrate
46 assistants serving magistrates who serve more than ten thou-
47 sand in population but less than fifteen thousand in population
48 shall be paid up to seven hundred forty-one dollars per month;
49 and magistrate assistants serving magistrates who serve fifteen
50 thousand or more in population shall be paid up to eight hun-
51 dred fifty-five dollars per month. For the purpose of determin-
52 ing the population served by each magistrate, the number of
53 magistrates authorized for each county shall be divided into
54 the population of each county. The salary of the magistrate
55 assistant shall be established by the magistrate within the limits
56 set forth in this section.

§50-1-11. Offices for magistrates; location; expenses; copy of state code.

1 Subject to the rules of the supreme court of appeals, the lo-
2 cation of offices for magistrates shall be determined by order
3 of the judge of the circuit court, or the chief judge thereof if
4 there is more than one judge of the circuit court. When re-
5 quired by geography or population dispersion and in order to
6 make such offices accessible to the public, an order may re-
7 quire more than one location for each magistrate. As near as
8 practicable within a county, all office accommodations shall
9 be comparable. All expenses of acquiring or renting offices and
10 utility and telephone expenses shall be paid by the county. All
11 other expenses, including, but not limited to, expenses for fur-
12 niture, equipment and supplies, shall be paid by the state.

13 The administrative director of the supreme court of appeals
14 shall supply each magistrate with a current copy of the West
15 Virginia code which shall remain the property of the state.

16 Magistrates who serve at more than one location within the
17 county, whether on a regular or temporary basis, shall be re-
18 imburged travel expenses for travel between locations at a rate
19 per mile equal to that allowed for reimbursement of travel
20 expenses of officers in the judicial branch of state government.

CHAPTER 81

(S. B. 284—By Mr. Jones)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the appearance of parties in magistrate court by agent or attorney.

Be it enacted by the Legislature of West Virginia:

That article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-4a. Appearance in civil cases.

1 Any party to a civil action in a magistrate court may
2 appear and conduct such action in person, by agent or by
3 attorney. Appearance by an agent or attorney shall have
4 the same effect as appearance by the party represented,
5 and the appearance by an agent shall not constitute the
6 unlawful practice of law. No magistrate may act as
7 such agent or attorney.

CHAPTER 82

(Com. Sub. for H. B. 1328—By Mr. Caudle)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-z, relating to the authority of counties to govern the business of massage when carried on within the county; licensing standards; grounds for denial of license; activities to which section does not apply; limitation upon county powers.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-z, to read as follows:

§7-1-3z. Authority of counties to govern business of massage.

1 (a) In addition to all other powers and duties now con-
2 ferred by law upon county commissions, county commissions
3 are hereby authorized and empowered, by order duly entered
4 of record, to adopt an ordinance which provides for the
5 licensing for the regulation of the business of massage when
6 carried on within the county. Such ordinances may be
7 adopted either for the entire county, or for any portion or
8 portions of such county which may constitute an effective
9 area or areas for such purposes, without the necessity of
10 adopting such ordinances for any other portion of such county.
11 Notwithstanding any other provision of this section to the
12 contrary, no such ordinance shall apply to or affect any terri-
13 tory within the boundaries of any municipal corporation which
14 has adopted and in effect an ordinance which provides for the
15 regulation of the business of massage, unless and until such
16 municipal corporation so provides by ordinance.

17 (b) The ordinance may condition the issuance of a license
18 to engage in the business of massage upon proof that a massage

19 business meets the reasonable standards set by the ordinance,
20 which standards may include, but need not be limited to, the
21 following areas;

22 (1) Requirement that massage personnel be at least eigh-
23 teen years of age;

24 (2) Sanitary conditions of the massage establishment;

25 (3) Hours of operation of the massage business;

26 (4) Prohibition of the sale or serving of food or beverage
27 or the conducting of nonmassage business on the premises of
28 the massage business. In the event that the business premises in
29 which such massage business is conducted has separate quar-
30 ters used for purposes other than the massage business, the pro-
31 hibition of this subsection shall apply only to the portion of
32 the premises exclusively devoted to the conduct of the mas-
33 sage business.

34 (c) The ordinance may also provide that a license to en-
35 gage in the business of massage may be denied upon a showing
36 by the licensing authority of any of the following:

37 (1) Proof that the massage personnel or the owners or opera-
38 tors of a massage business have been convicted of a violation
39 of any of the provisions of article eight, eight-a, eight-b or
40 eight-c, chapter sixty-one of this code or proof that massage
41 personnel or the owners or operators of a massage business
42 have been convicted in any other state of any offense which, if
43 committed or attempted in this state, would have been punish-
44 able as one or more of the above-mentioned offenses of this
45 subsection.

46 (2) Proof that the massage personnel, or the owners, or
47 operators of a massage business have been convicted of any
48 felony offense involving the sale of a controlled substance
49 specified in section two hundred four, two hundred six, two
50 hundred eight, two hundred ten or two hundred twelve, article
51 two, chapter sixty-a of this code or proof that the massage
52 personnel or the owners or operators of the massage business
53 have been convicted in any other state of any offense, which
54 if committed or attempted in this state, would have been

55 punishable as one or more of the above-mentioned offenses of
56 this subsection.

57 (d) The ordinance may require that application to conduct
58 the business of massage be made on such form as prescribed
59 by the licensing authority, which application may require the
60 following information:

61 (1) The name of the applicant;

62 (2) If such applicant be an unincorporated association, the
63 names and addresses of the members of its governing board;

64 (3) If such applicant be a corporation, the names and
65 addresses of its officers and directors;

66 (4) The place at which such applicant will conduct its
67 operations and whether the same is owned or leased by the
68 applicant;

69 (5) The name of the owner of the place at which the ap-
70 plicant will conduct its operation, if not the same as the
71 applicant;

72 (6) The number of members of the applicant;

73 (7) The names of all massage personnel, owners, operators
74 or other employees of the massage business;

75 (8) Such other information as the licensing authority may
76 reasonably require which may include, but need not be limited
77 to, the criminal records, if any, of each member of the ap-
78 plicant's governing board and/or its officers and directors,
79 or any of the massage personnel, owners, operators or other
80 employees of the massage business who have been convicted
81 of any violation of any of the provisions set forth in sub-
82 section (c).

83 The ordinance may require that such application be verified
84 by the applicant or by each member of the governing board
85 of the applicant if an unincorporated association or, if the
86 applicant be a corporation, by each of its officers and all
87 members of its board of directors. The ordinance may also
88 require that such application be accompanied by a license fee
89 not exceeding the sum of one hundred dollars. Any license

90 issued under the provisions of this section shall be effective
91 for one year and may be renewed upon the same showing as
92 required for the issuance of the initial license, together with
93 the payment of fees, if any. The ordinance may require license
94 holders to notify the licensing authority of any changes in the
95 information required by the application within a reasonable
96 period after such changes may occur.

97 (e) This section does not apply to barbers or beauticians
98 licensed to practice, or to persons licensed to practice in any
99 of the health professions, under the provisions of chapter
100 thirty of this code when engaging in such practice within the
101 scope of his or her license.

102 (f) Nothing contained in this chapter shall preclude a
103 county commission from prohibiting a person of one sex from
104 engaging in the massage of a person of the other sex.

CHAPTER 83

(Com. Sub. for S. B. 470—By Mr. Huffman)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to repeal articles two-a, three-a and eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article three of said chapter, all relating to completely revising the law of this state on physicians and surgeons, podiatrists and assistants to physicians; establishing the West Virginia board of medicine in lieu of the medical licensing board of West Virginia and giving it certain broad powers and duties with respect to the licensing of the practices of medicine and surgery and podiatry and certifying of physician assistants in the state and to the disciplining of said practices and related matters; giving legislative findings, a certain purpose, short title and certain definitions; providing for the creation of the West Virginia board of medicine, transfer of powers and

duties from the medical licensing board, appointment and terms of members, filling vacancies and removal of members; providing for the conduct of business of the board of medicine; relating to meetings, officers, compensation and expenses of the board; providing for the powers and duties of the board; providing for the state director of health to act as secretary of the board; requiring the maintenance of records; relating to the expungement, examination, confidentiality and release of records; prescribing criminal penalties for unauthorized disclosure of records; relating to the physician-patient privilege; prescribing qualifications for licenses to practice medicine and surgery and podiatry; providing for examinations, fees, educational training permits, temporary permits and for the continuance of former licenses and permits; relating to endorsement of licenses to practice medicine and surgery and podiatry, fees and temporary licenses; providing for biennial renewal of licenses to practice medicine and surgery and podiatry, fees and inactive licenses; regulating the unauthorized practice of medicine and surgery and podiatry and prescribing criminal penalties and limitations; giving broad powers to the board of medicine to discipline physicians and podiatrists; providing for the disclosure of medical peer review committee information and reporting of professional malpractice and professional incompetence; requiring reporting to the board by hospital officer, professional societies, professional liability insurers and clerks of courts of record; relating to the independence of board action; prescribing the grounds for license denial and discipline of physicians and podiatrists; relating to investigations by the board and physical and mental examinations; providing for hearings and reporting by the board; relating to the suspension, revocation, termination and restriction of licenses to practice medicine and surgery and podiatry and the denial of applicants seeking to be so licensed, both after and before a hearing; relating to reapplication for license, civil and criminal immunity and the voluntary limitation of licenses; providing for medical corporations, podiatry corporations, applications for registration thereof, fees, notice to the secretary of state of issuance of certificate, action by secretary of state

and rights and limitations generally; providing for the biennial registration of medical and podiatry corporations, when practice must cease, admissibility and effect of certificate signed by secretary of board, criminal penalties and severability; regulating the practice of physician assistants; providing certain definitions, rules and regulations by the board and annual reports regarding physician assistants; relating to certification, temporary certification, recertification, reciprocity, job descriptions and revocation or suspension of certification for physician assistants; prescribing responsibilities of supervising physicians, legal responsibilities for physician assistants, identification, limitations on employment and duties and fees; prohibiting the unlawful use of title of physician assistant, unlawful representation of physician assistant as a physician and criminal penalties therefor; and limiting application of the article for persons with the degree of doctor of osteopathy.

Be it enacted by the Legislature of West Virginia:

That articles two-a, three-a and eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

- §30-3-1. Legislative findings.
- §30-3-2. Purpose.
- §30-3-3. Short title.
- §30-3-4. Definitions.
- §30-3-5. West Virginia board of medicine created; transfer of powers and duties from medical licensing board; appointment and terms of members; vacancies; removal.
- §30-3-6. Conduct of business of West Virginia board of medicine; meetings; officers; compensation; expenses; quorum.
- §30-3-7. Power and duties of West Virginia board of medicine.
- §30-3-8. State director of health to act as secretary of the board.
- §30-3-9. Records of board; expungement; examination; confidentiality; release of records; criminal penalties for unauthorized disclosure; physician-patient privilege.
- §30-3-10. Qualifications for license to practice medicine and surgery and to practice podiatry; examinations; fees; educational training permit; temporary permits; continuance of former licenses and permits.

- §30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license.
- §30-3-12. Biennial renewal of license to practice medicine and surgery and podiatry; fee; inactive license.
- §30-3-13. Unauthorized practice of medicine and surgery and podiatry; criminal penalties; limitations.
- §30-3-14. Professional discipline of physicians and podiatrists; disclosure of medical peer review committee information; reporting of professional malpractice and professional incompetence to board; reporting to board by hospital officers; professional societies, professional liability insurers, and clerks of courts of record; independence of board action; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license.
- §30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.
- §30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistants as a physician; criminal penalties.
- §30-3-17. Limitation of article.

§30-3-1. Legislative findings.

1 The Legislature hereby finds and declares that the
2 practice of medicine and surgery and the practice of
3 podiatry is a privilege and not a natural right of indi-
4 viduals. As a matter of public policy, it is necessary to
5 protect the public interest through enactment of this
6 article and to regulate the granting of such privileges
7 and their use.

§30-3-2. Purpose.

1 The purpose of this article is to provide for the licensure
2 and professional discipline of physicians and podiatrists
3 and for the certification and discipline of physician as-
4 sistants.

§30-3-3. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Medical Practice Act."

§30-3-4. Definitions.

- 1 As used in this article:

- 2 (1) "Board" means the West Virginia board of medi-
- 3 cine established in section five of this article. When-
- 4 ever any other provision of this code refers to the "medical
- 5 licensing board of West Virginia," such reference shall
- 6 be construed to mean and refer to the "West Virginia
- 7 board of medicine" as created and established in this
- 8 article.

- 9 (2) "Medical peer review committee" means a com-
- 10 mittee of or appointed by a state or local professional
- 11 medical society, or a committee of or appointed by a
- 12 medical staff of a licensed hospital, long-term care facil-
- 13 ity or other health care facility, or any health care peer
- 14 review organization as defined in section one, article
- 15 three-c of this chapter, or any other organization of pro-
- 16 fessionals in this state formed pursuant to state or federal
- 17 law and authorized to evaluate medical and health care
- 18 services.

- 19 (3) "Practice of medicine and surgery" means the
- 20 diagnosis or treatment of or operation or prescription
- 21 for any human disease, pain, injury, deformity or other
- 22 physical or mental condition.

- 23 (4) "Practice of podiatry" means the examination,
- 24 diagnosis, treatment, prevention and care of conditions
- 25 and functions of the human foot by medical, surgical and
- 26 other scientific knowledge and methods; and medical
- 27 and surgical treatment of warts and other dermatological
- 28 lesions of the hand which similarly occur in the foot.
- 29 When a podiatrist uses other than local anesthesia, in
- 30 surgical treatment of the foot, such anesthesia must be
- 31 administered by or under the direction of an anestheti-
- 32 cian or certified nurse anesthetist authorized under
- 33 the state of West Virginia to administer anesthesia. A
- 34 medical evaluation shall be made by a physician of

35 every patient prior to the administration of other than
36 local anesthesia.

§30-3-5. West Virginia board of medicine created; transfer of powers and duties from medical licensing board; appointment and terms of members; vacancies; removal.

1 There is hereby created a medical licensing board to
2 be known as the "West Virginia board of medicine."
3 The West Virginia board of medicine shall assume, carry
4 on and succeed to all the duties, rights, powers, obliga-
5 tions and liabilities heretofore belonging to or
6 exercised by the medical licensing board of West
7 Virginia. All the rules and regulations, orders, rulings,
8 licenses, certificates, permits and other acts and under-
9 takings of the medical licensing board of West Virginia
10 as heretofore constituted shall continue as those of the
11 West Virginia board of medicine until they expire or are
12 amended, altered or revoked. The board shall be the
13 sole authority for the issuance of licenses to practice
14 medicine and surgery and to practice podiatry and certifi-
15 cates for physician assistants in this state and shall be a
16 regulatory and disciplinary body for the practice of medi-
17 cine and surgery and the practice of podiatry and for
18 physician assistants in this state.

19 The board shall consist of thirteen members. One mem-
20 ber shall be the state director of health ex officio, with
21 the right to vote as a member of the board. The other
22 twelve members shall be appointed by the governor,
23 with the advice and consent of the Senate. Eight of
24 the members shall be appointed from among individuals
25 holding the degree of doctor of medicine and two shall
26 hold the degree of doctor of podiatric medicine. Each
27 of these members must be duly licensed to practice his
28 profession in this state on the date of his appointment
29 and must have been licensed and actively practicing his
30 profession for at least five years immediately preceding
31 the date of his appointment. Two lay members shall
32 be appointed to further represent health care consumers.
33 Neither the lay members nor any person within the lay
34 member's immediate family shall be a provider of or

35 be employed by a provider of health care services. The
36 state director of health's term shall continue for the
37 period that he holds office as state director of health.
38 Each other member of the board shall be appointed to
39 serve a term of five years: *Provided*, That the members
40 of the medical licensing board holding appointments on
41 the effective date of this section shall continue to serve
42 as members of the board of medicine until the expiration
43 of their term unless sooner removed. Each term shall
44 begin on the first day of October of the applicable year,
45 and a member shall not be appointed to more than two
46 consecutive full terms on the board.

47 Not more than four physicians, one podiatrist and one
48 lay member appointed by the governor as members of
49 the board shall belong to the same political party. A
50 person is not eligible for membership on the board who
51 is a member of any political party executive committee
52 or, with the exception of the state director of health,
53 who holds any public office or public employment under
54 the federal government or under the government of this
55 state or any political subdivision thereof or who is an
56 appointee or employee of the state board of health.

57 In making appointments to the board, the governor
58 shall, so far as practicable, select the members from
59 different geographical sections of the state. When a
60 vacancy on the board occurs and less than one year
61 remains in the unexpired term, the appointee shall be
62 eligible to serve the remainder of the unexpired term and
63 two consecutive full terms on the board.

64 No member may be removed from office except for
65 official misconduct, incompetence, neglect of duty or gross
66 immorality: *Provided*, That the expiration or revocation
67 of the professional license of a member of the board shall
68 be cause for his removal.

§30-3-6. Conduct of business of West Virginia board of medicine; meetings; officers; compensation; expenses; quorum.

1 Every two years the board shall elect from among
2 its members a president and vice president. Regular

3 meetings shall be held as scheduled by the rules and
4 regulations of the board. Special meetings of the board
5 may be called by the joint action of the president and
6 vice president or by any three members of the board
7 on seven days' prior written notice by mail or, in
8 case of emergency, on two days' notice by telephone.
9 With the exception of the state director of health, mem-
10 bers of the board shall receive one hundred dollars for
11 each day actually spent in attending the sessions of the
12 board or its committees. A board member shall be re-
13 imbursed for all reasonable and necessary expenses
14 actually incurred when a meeting is held in a location
15 that is removed from the member's place of resi-
16 dence.

17 A majority of the membership of the board consti-
18 tutes a quorum for the transaction of business, and busi-
19 ness is transacted by a majority vote of a quorum, except
20 for disciplinary actions which shall require the affir-
21 mative vote of not less than five members or a majority
22 vote of those present, whichever is greater.

23 Meetings of the board shall be held in public session,
24 except that the board may hold closed sessions to prepare,
25 approve, grade or administer examinations and dis-
26 ciplinary proceedings shall be held in closed sessions,
27 unless the party subject to discipline requests that the
28 hearing be held in public session.

§30-3-7. Power and duties of West Virginia board of medicine.

1 (a) The board, in accordance with the provisions of
2 this article, shall administer and supervise examinations
3 and determine qualifications of applicants for licenses
4 to practice medicine and surgery and to practice podiatry,
5 shall issue licenses to qualified applicants and shall regu-
6 late the professional conduct and discipline of such indi-
7 viduals. In carrying out its functions, the board may:

8 (1) Adopt such regulations as are necessary to carry
9 out the purposes of this article;

10 (2) Hold hearings and conduct investigations, sub-
11 poena witnesses and documents and administer oaths;

12 (3) Institute proceedings in the courts of this state
13 to enforce its subpoenas for the production of witnesses
14 and documents and its orders and to restrain and enjoin
15 violations of this article and of any regulations promul-
16 gated under it;

17 (4) Employ investigators, attorneys, hearing exam-
18 iners, consultants and such other employees as may be
19 necessary;

20 (5) Enter into contracts and receive and disburse
21 funds according to law;

22 (6) Establish and certify standards for the supervision
23 and certification of physician assistants;

24 (7) Authorize medical and podiatry corporations in
25 accordance with the provisions and subject to the limita-
26 tions of section fifteen of this article to practice medicine
27 and surgery or podiatry through duly licensed physicians
28 or podiatrists;

29 (8) Establish a fee, not to exceed fifty dollars, for
30 a reciprocal endorsement; and

31 (9) Perform such other duties as are set forth
32 in this article or otherwise provided for in this
33 code.

34 (b) The board shall submit an annual report of its
35 activities to the Legislature. The report shall include a
36 statistical analysis of complaints received, charges
37 investigated, charges dismissed after investigation, the
38 grounds for each such dismissal and disciplinary proceed-
39 ings and disposition.

§30-3-8. State director of health to act as secretary of the board.

1 The state director of health, in addition to being a
2 member of the board, shall act as its secretary and shall
3 be in charge of its offices and responsible to the board
4 for the maintenance of the offices and the preparation
5 of application forms, licenses, reports and all other papers
6 or documents that may be required by the board in the

7 performance of its duties. He shall, together with the
8 president of the board, sign all licenses, reports and other
9 documents.

§30-3-9. Records of board; expungement; examination; confidentiality; release of records; criminal penalties for unauthorized disclosure; physician-patient privilege.

1 (a) The board shall maintain a permanent record of
2 the names of all physicians and podiatrists licensed or
3 otherwise lawfully practicing in this state and of all
4 persons applying to be so licensed to practice, along with
5 an individual historical record for each such individual
6 containing reports and all other information furnished
7 the board under this article or otherwise. Such record
8 may include, in accordance with rules established by
9 the board, additional items relating to the individual's
10 record of professional practice that will facilitate proper
11 review of such individual's professional competence.

12 (b) Upon a determination by the board that any report
13 submitted to it is without merit, the report shall be
14 expunged from the individual's historical record.

15 (c) A physician, podiatrist or applicant, or authorized
16 representative thereof, has the right, upon request, to
17 examine his own individual historical record maintained
18 by the board pursuant to this article and to place into
19 such record a statement of reasonable length of his own
20 view of the correctness or relevance of any information
21 existing in such record. Such statement shall at all times
22 accompany that part of the record in contention.

23 (d) A physician, podiatrist or applicant has the right
24 to seek through court action the amendment or ex-
25 pungement of any part of his historical record.

26 (e) A physician, podiatrist or applicant shall be pro-
27 vided written notice within thirty days of the placement
28 and substance of any information in his individual his-
29 torical record that pertains to him and that was not
30 submitted to the board by him.

31 (f) Except for information relating to biographical
32 background, education, professional training and prac-
33 tice, prior disciplinary action by any entity and informa-
34 tion contained on the licensure application, the board
35 shall expunge information in an individual's historical
36 record unless it has initiated a proceeding for a hearing
37 upon such information within two years of the placing
38 of the information into the historical record.

39 (g) Any reports, information or records received and
40 maintained by the board pursuant to this article, including
41 any such material received or developed by the board
42 during any investigation or hearing, shall be strictly
43 confidential. The board may only disclose any such con-
44 fidential information in the following circumstances:

45 (1) In an examination or disciplinary hearing sanc-
46 tioned by the board or in any subsequent trial or appeal
47 of a board action or order;

48 (2) To physician or podiatrist licensing or disciplinary
49 authorities of other jurisdictions, medical peer review
50 committees, hospital governing bodies or other hospital
51 or medical staff committees located within or outside this
52 state which are concerned with granting, limiting or
53 denying a physician or podiatrist hospital privileges:
54 *Provided*, That the board shall include along with any
55 such disclosure an indication as to whether or not such
56 information has been substantiated;

57 (3) Pursuant to an order of a court of competent
58 jurisdiction; and

59 (4) To qualified personnel for bona fide research or
60 educational purposes, if personally identifiable informa-
61 tion relating to any patient or physician is first deleted.

62 (h) Orders of the board, except for private reprimands,
63 relating to disciplinary action against a physician
64 or podiatrist are public information.

65 (i) Confidential information received, maintained or
66 developed by the board or disclosed by the board to
67 others as provided for in this article shall not under any
68 circumstances be available for discovery or court sub-

69 poena or be introduced into evidence in any medical
70 malpractice suit or other action for damages arising out
71 of the provision of or failure to provide health care ser-
72 vices.

73 (j) Any person who discloses confidential information
74 possessed by the board in violation of the provisions of
75 this article is guilty of a misdemeanor, and, upon con-
76 viction thereof, shall be fined not more than one thousand
77 dollars, or imprisoned in the county jail not more than
78 one year, or both fined and imprisoned.

79 (k) Any physician-patient privilege does not apply in
80 any investigation or proceeding by the board or by a
81 medical peer review committee or by a hospital govern-
82 ing board with respect to relevant hospital medical
83 records, while any of the aforesaid are acting within the
84 scope of their authority: *Provided*, That the disclosure
85 of any information pursuant to this provision shall not be
86 considered a waiver of any such privilege in any other
87 proceeding.

**§30-3-10. Qualifications for license to practice medicine and
surgery and to practice podiatry; examinations;
fees; educational training permit; temporary per-
mits; continuance of former licenses and permits.**

1 (a) The board shall issue a license to practice medicine
2 and surgery or to practice podiatry to any individual who
3 is qualified to do so in accordance with the provisions of
4 this article.

5 (b) For an individual to be licensed to practice medi-
6 cine and surgery in this state, he must meet the following
7 requirements:

8 (1) He shall submit an application to the board on a
9 form provided by the board and remit to the board an
10 examination fee not to exceed two hundred fifty dollars,
11 the amount of such fee to be set by the board. The
12 application must, as a minimum, require a sworn and
13 notarized statement that the applicant is of good moral
14 character and that he is physically and mentally cap-
15 able of engaging in the practice of medicine and surgery;

16 (2) He must provide evidence of graduation and
17 receipt of the degree of doctor of medicine or its equiva-
18 lent from a school of medicine which is approved by the
19 liaison committee on medical education or by the board;

20 (3) He must submit evidence to the board of having
21 completed a minimum of one year of graduate clinical
22 training in a program approved by the board; and

23 (4) He must pass an examination approved by the
24 board, which examination can be related to a national
25 standard. The examination shall be in the English lang-
26 uage and be designed to ascertain an applicant's fitness to
27 practice medicine and surgery. The board shall before the
28 date of examination determine what will constitute a pass-
29 ing score: *Provided*, That the said board, or a majority of
30 them, may accept in lieu of an examination of applicants,
31 the certificate of the national board of medical examiners
32 issued within the previous eight years, or diplomate cer-
33 tificate from an American specialty board: *Provided, how-*
34 *ever*, That any certificate or license to practice which is
35 granted by the board by virtue of such diplomate certifi-
36 cate shall only be valid so long as the holder thereof main-
37 tains such diplomate certificate in good standing with the
38 applicable American specialty board and no longer and
39 such certification shall be limited to that specific specialty
40 in the practice of medicine and surgery in this state. If
41 an applicant fails to pass the examination on two occa-
42 sions, he shall successfully complete a course of study or
43 training, as approved by the board, designed to improve
44 his ability to engage in the practice of medicine and sur-
45 gery, before being eligible for reexamination.

46 (c) In addition to the requirements of subsection (b)
47 hereof, any individual who has received the degree of doc-
48 tor of medicine or its equivalent from a school of medicine
49 located outside of the United States, the Commonwealth
50 of Puerto Rico and Canada, to be licensed to practice
51 medicine in this state, must also meet the following addi-
52 tional requirements and limitations:

53 (1) He must be able to demonstrate to the satisfaction
54 of the board his ability to communicate in the English
55 language; and

56 (2) He must have fulfilled the requirements of the
57 educational council for foreign medical graduates for
58 certification before taking a licensure examination, in-
59 cluding the receipt of a passing score on the educational
60 council for foreign medical graduates examination; and

61 (3) An individual subject to the provisions of this
62 subsection shall not be awarded a temporary permit un-
63 less such individual was a bona fide resident of this
64 state for the six-month period preceding the filing of
65 his application for such temporary permit: *Provided*
66 *further*, That an individual subject to the provisions of
67 this subsection who did not hold a temporary permit
68 before June eight, one thousand nine hundred seventy-
69 nine, shall be ineligible for a temporary permit if he has
70 failed to pass the medical examination prescribed by
71 the board on two or more occasions.

72 (d) For an individual to be licensed to practice podiatry
73 in this state, he must meet the following requirements:

74 (1) He shall submit an application to the board on a
75 form provided by the board and remit to the board an
76 examination fee not to exceed two hundred fifty dollars,
77 the amount of such fee to be set by the board. The appli-
78 cation must, as a minimum, require a sworn and notarized
79 statement that the applicant is of good moral character
80 and that he is physically and mentally capable of en-
81 gaging in the practice of podiatric medicine;

82 (2) He must provide evidence of graduation and receipt
83 of the degree of doctor of podiatric medicine or its equiva-
84 lent from a school of podiatric medicine which is approved
85 by the council of podiatry education or by the board;

86 (3) He must pass an examination approved by the
87 board, which examination can be related to a national
88 standard. The examination shall be in the English lan-
89 guage and be designed to ascertain an applicant's fitness to
90 practice podiatric medicine. The board shall before the
91 date of examination determine what will constitute a
92 passing score. If an applicant fails to pass the examina-
93 tion on two occasions, he shall successfully complete a
94 course of study or training, as approved by the board,

95 designed to improve his ability to engage in the practice
96 of podiatric medicine, before being eligible for reexamina-
97 tion.

98 (e) An individual meeting the requirements set forth
99 in subdivisions (1) and (2), subsection (b) and subdivi-
100 sions (1) and (2), subsection (c), if applicable, of this
101 section, may be granted an educational training permit to
102 practice medicine and surgery. Such permits shall autho-
103 rize the permit holder to practice medicine and surgery
104 only under the supervision of a licensed physician in a
105 training program approved by the liaison committee on
106 graduate medical education or the board. The board may
107 fix and collect a fee not to exceed fifty dollars for this
108 class of permit.

109 (f) If the board determines that the public health in a
110 specified geographical area of the state requires such
111 action, the board may grant a temporary permit to an
112 individual who meets the requirements set forth in sub-
113 divisions (1) and (2), subsection (b) and subdivisions (1)
114 and (2), subsection (c), if applicable, of this section. Such
115 license shall be limited to the specified geographical area
116 and is limited for a period of not more than one year. The
117 board may fix and collect a fee not to exceed fifty dollars
118 for this class of temporary permit.

119 (g) All licenses or temporary permits granted prior to
120 the effective date of this article and valid on the effec-
121 tive date of this article shall continue in full effect for
122 such term and under such conditions as provided by law
123 at the time of the granting of the license or temporary
124 permit: *Provided*, That any physician who has been
125 certified by the educational council for foreign medi-
126 cal graduates or who, as of the effective date of this
127 section, holds a temporary permit to practice in a pre-
128 scribed area, shall not when under the supervision of a
129 licensed physician be ineligible for a temporary license
130 permit to practice in any mental health or state-owned
131 facility and, in any hospital, clinic, physician's office and
132 any other approved health care facility until July one, one
133 thousand nine hundred eighty-two, by virtue of his failure
134 to pass the medical examination prescribed by the board,

135 so long as such physician shall take said examination at
136 least once each year: *Provided, however,* That any such
137 physician granted a temporary permit who fails to pass
138 the medical examination prescribed by the board before
139 July one, one thousand nine hundred eighty-two, shall
140 be thereafter disqualified from obtaining any further
141 temporary permits in this state: *Provided further,* That
142 the provisions of subsection (d) of this section shall not
143 apply to any person legally entitled to practice chiropody
144 or podiatry in this state prior to June eleventh, one
145 thousand nine hundred sixty-five: *And provided further,*
146 That all persons licensed to practice chiropody prior to
147 June eleventh, one thousand nine hundred sixty-five,
148 shall be permitted to use the term "chiropody-podiatry"
149 and shall have the rights, privileges and responsibilities of
150 a podiatrist set out in this article.

**§30-3-11. Endorsement of licenses to practice medicine and
surgery and podiatry; fees; temporary license.**

1 (a) Any person seeking to be licensed to practice
2 medicine and surgery in this state who holds a valid
3 license to practice medicine and surgery attained under
4 requirements substantially similar to the requirements
5 of section ten of this article from another state, the
6 District of Columbia, the Commonwealth of Puerto Rico
7 or Canada and any person seeking to be licensed to
8 practice podiatry in this state who holds a valid license to
9 practice podiatry attained under requirements substan-
10 tially similar to the requirements in section ten of this
11 article from another state, territory or foreign country
12 or the District of Columbia shall be issued a license to
13 practice medicine and surgery or podiatry, as appropriate,
14 in this state if he meets the following requirements:

15 (1) He must submit an application to the board on
16 forms provided by the board and remit a licensure
17 fee, not to exceed one hundred fifty dollars, the
18 amount of such fee to be set by the board. The
19 application must, as a minimum, require a statement that
20 the applicant is a licensed physician or podiatrist in
21 good standing and indicate whether any medical disci-

22 plinary action has been taken against him in the past;
23 and

24 (2) He must demonstrate to the satisfaction of the
25 board that he has the requisite qualifications to provide
26 the same standard of care as a physician or podiatrist
27 initially licensed in this state.

28 (b) The board may investigate the applicant and may
29 request a personal interview to review the applicant's
30 qualifications and professional credentials.

31 (c) The board may, at its discretion, grant a temporary
32 permit to an individual applying for licensure under this
33 section if the individual meets the requirements of sub-
34 division (1), subsection (a) of this section. Such tem-
35 porary permit shall only be valid until the board is able
36 to meet and consider the endorsement request. The board
37 may fix and collect a fee not to exceed fifty dollars for
38 a temporary permit.

**§30-3-12. Biennial renewal of license to practice medicine and
surgery and podiatry; fee; inactive license.**

1 (a) A license to practice medicine and surgery or
2 podiatry in this state is valid for a term of two years
3 and shall be renewed upon a receipt of a fee, not to ex-
4 ceed fifty dollars, as set by the board, and submission of
5 an application on forms provided by the board.

6 (b) The board may renew, on an inactive basis, the
7 license of a physician or podiatrist who is currently
8 licensed to practice medicine and surgery or podiatry
9 in, but is not actually practicing, medicine and surgery
10 or podiatry in this state. A physician or podiatrist hold-
11 ing an inactive license shall not practice medicine and
12 surgery or podiatry in this state, but he may convert
13 his inactive license to an active one upon a request to
14 the board that accounts for his period of inactivity to
15 the satisfaction of the board. An inactive license may
16 be obtained upon receipt of a fee, not to exceed fifty
17 dollars, as set by the board, and submission of an ap-
18 plication on forms provided by the board on an annual
19 basis.

§30-3-13. Unauthorized practice of medicine and surgery and podiatry; criminal penalties; limitations.

1 (a) A person shall not engage in the practice of medi-
2 cine and surgery or podiatry, hold himself out as quali-
3 fied to practice medicine and surgery or podiatry or use
4 any title, word or abbreviation to indicate to or induce
5 others to believe that he is licensed to practice medicine
6 and surgery or podiatry in this state unless he is actually
7 licensed under the provisions of this article. Any person
8 who violates the provisions of this subsection is guilty
9 of a misdemeanor, and, upon conviction thereof, shall
10 be fined not more than ten thousand dollars, or im-
11 prisoned in the county jail not more than twelve months,
12 or both fined and imprisoned.

13 (b) The provisions of this section do not apply to:

14 (1) Persons who are duly licensed health care pro-
15 viders under other pertinent provisions of this code and
16 are acting within the scope of their license;

17 (2) Physicians or podiatrists licensed in other states
18 or foreign countries who are acting in a consulting capa-
19 city with physicians or podiatrists duly licensed in this
20 state, for a period of not more than three months;

21 (3) Persons holding licenses granted by another state
22 or foreign country who are commissioned medical offi-
23 cers of, a member of or employed by the armed forces of
24 the United States, the United States public health ser-
25 vice, the veterans' administration of the United States,
26 any federal institution or any other federal agency
27 while engaged in the performance of their official duties;

28 (4) Any person providing first aid care in emergency
29 situations;

30 (5) The practice of the religious tenets of any recog-
31 nized church in the administration of assistance to the
32 sick or suffering by mental or spiritual means;

33 (6) Visiting medical faculty engaged in teaching or
34 research duties at a medical school or institution recog-
35 nized by the board and who are in this state for periods

36 of not more than six months: *Provided*, That such indi-
37 viduals do not otherwise engage in the practice of medi-
38 cine or podiatry outside of the auspices of their sponsor-
39 ing institutions;

40 (7) Persons enrolled in a school of medicine approved
41 by the liaison committee on medical education or by the
42 board, or persons enrolled in a school of podiatric medi-
43 cine approved by the council of podiatry education or by
44 the board, or engaged in graduate medical training in a
45 program approved by the liaison committee on graduate
46 medical education or the board who are performing func-
47 tions in the course of training; and

48 (8) The fitting, recommending or sale of corrective
49 shoes, arch supports or similar mechanical appliances
50 in commercial establishments.

51 (c) This section shall not be construed as being in any
52 way a limitation upon the services of a physician as-
53 sistant performed in accordance with the provisions of
54 this article.

§30-3-14. Professional discipline of physicians and podiatrists; disclosure of medical peer review committee information; reporting of professional malpractice and professional incompetence to board; reporting to board by hospital officer, professional societies, professional liability insurers, and clerks of courts of record; independence of board action; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; re-application; civil and criminal immunity; voluntary limitation of license.

1 (a) The board may independently initiate disciplinary
2 proceedings as well as initiate disciplinary proceedings
3 based on information received from medical peer review
4 committees, physicians, podiatrists, hospital administra-
5 tors, professional societies and others.

6 (b) Any medical peer review committee in this state

7 shall, upon request of the board, disclose to the board
8 information that may relate to the practice or perfor-
9 mance of any physician or podiatrist known to that
10 medical peer review committee.

11 Any medical peer review committee, any physician
12 or podiatrist licensed to practice or otherwise lawfully
13 practicing his profession within this state, any physician
14 assistant and any other person may report to the board
15 relevant facts about the conduct of any physician or
16 podiatrist in this state which in the opinion of the medi-
17 cal peer review committee, physician, podiatrist or physi-
18 cian assistant amounts to professional malpractice
19 or professional incompetence: *Provided*, That copies
20 of requests for information from a medical peer
21 review committee under the first paragraph of this sub-
22 section may be provided to the subject physician or
23 podiatrist, and in such case the physician or podiatrist
24 has fifteen days to comment on the requested informa-
25 tion and his comments must be considered by the board,
26 however, such notification shall not be given if the
27 board determines notification may jeopardize its in-
28 vestigation.

29 The chief executive officer of every hospital shall
30 within sixty days after the completion of the hospital's
31 formal disciplinary procedure and also after any result-
32 ing legal action, report in writing to the board the name
33 of any member of the medical staff or any other physi-
34 cian or podiatrist practicing in the hospital whose hospi-
35 tal privileges have been revoked, restricted, reduced or
36 terminated for any cause, including resignation, to-
37 gether with all pertinent information relating to such
38 action. The chief executive officer shall also report any
39 other formal disciplinary action taken against any phy-
40 sician or podiatrist by the hospital upon the recom-
41 mendation of its medical staff relating to professional
42 ethics, medical incompetence, medical malpractice, moral
43 turpitude or drug or alcohol abuse. This paragraph does
44 not apply to any temporary suspension for failure to
45 maintain records on a timely basis or for failure to attend
46 staff or section meetings.

47 Any professional society in this state comprised pri-
48 marily of physicians or podiatrists which takes formal
49 disciplinary action against a member relating to profes-
50 sional ethics, professional incompetence, professional
51 malpractice, moral turpitude or drug or alcohol abuse,
52 shall within sixty days of a final decision report in writ-
53 ing to the board the name of such member, together with
54 all pertinent information relating to such action.

55 The filing of a report with the board pursuant to any
56 provision of this article, any investigation by the board
57 or any disposition of a case by the board does not pre-
58 clude any action by a hospital, other health care facility
59 or professional society comprised primarily of physicians
60 or podiatrists to suspend, restrict or revoke the privileges
61 or membership of such physician or podiatrist.

62 Every insurer providing professional liability in-
63 surance to a physician or podiatrist in this state shall
64 submit to the board the following information within
65 thirty days from any judgment, dismissal or settlement
66 of a civil action involving the insured; the date of any
67 judgment, dismissal or settlement; whether any appeal
68 has been taken on the judgment, and, if so, by which
69 party; the amount of any settlement or judgment against
70 the insured; and such other information within the
71 knowledge of the insurer as the board requires.

72 Within thirty days after the conviction of a person
73 known to be a physician or podiatrist licensed or other-
74 wise lawfully practicing medicine and surgery or podiatry
75 in this state or applying to be so licensed of a felony
76 under the laws of this state, the clerk of the court of
77 record in which the conviction was entered shall forward
78 to the board a certified true and correct abstract of
79 record of the convicting court. The abstract shall in-
80 clude the name and address of such physician or podi-
81 atrist or applicant, the nature of the offense committed
82 and the final judgment and sentence of the court.

83 The board shall provide forms for filing reports pur-
84 suant to this section. Reports submitted in other forms
85 shall be accepted by the board.

86 (c) The board may deny an application for license or
87 other authorization to practice medicine and surgery
88 or podiatry in this state and may discipline a physician
89 or podiatrist licensed or otherwise lawfully practicing
90 in this state who, after a hearing, has been adjudged
91 by the board as unqualified due to any of the following
92 reasons:

93 (1) Attempting to obtain, obtaining, renewing or at-
94 tempting to renew a license to practice medicine and
95 surgery or podiatry by bribery, fraudulent misrepresenta-
96 tion or through known error of the board.

97 (2) Being found guilty of a crime in any jurisdiction,
98 which offense is a felony, involves moral turpitude or
99 directly relates to the practice of medicine. Any plea of
100 nolo contendere is a conviction for the purposes of this
101 subdivision.

102 (3) False or deceptive advertising.

103 (4) Aiding, assisting, procuring or advising any un-
104 authorized person to practice medicine and surgery or
105 podiatry contrary to law.

106 (5) Making or filing a report that the person knows
107 to be false; intentionally or negligently failing to file a
108 report or record required by state or federal law; will-
109 fully impeding or obstructing the filing of a report or
110 record required by state or federal law; or inducing
111 another person to do any of the foregoing. Such reports
112 and records as are herein covered mean only those that
113 are signed in the capacity as a licensed physician or
114 podiatrist.

115 (6) Requesting, receiving or paying directly or in-
116 directly a payment, rebate, refund, commission, credit or
117 other form of profit or valuable consideration for the refer-
118 ral of patients to any person or entity in connection with
119 providing medical or other health care services or clinical
120 laboratory services, supplies of any kind, drugs, medica-
121 tion or any other medical goods, services or devices used in
122 connection with medical or other health care services.

123 (7) It is unprofessional conduct for any physician or
124 podiatrist to refer a patient to any clinical laboratory in
125 which the physician or podiatrist has a proprietary in-
126 terest unless such physician or podiatrist discloses in
127 writing such interest to the patient. Such written dis-
128 closure shall indicate that the patient may choose any
129 clinical laboratory for purposes of having any laboratory
130 work or assignment performed.

131 As used herein "proprietary interest" does not include
132 an ownership interest in a building in which space is
133 leased to a clinical laboratory at the prevailing rate
134 under a lease arrangement that is not conditional upon
135 the income or gross receipts of the clinical laboratory.

136 (8) Exercising influence within a patient-physician
137 relationship for the purpose of engaging a patient in
138 sexual activity.

139 (9) Making a deceptive, untrue or fraudulent repre-
140 sentation in the practice of medicine and surgery or
141 podiatry.

142 (10) Soliciting patients, either personally or by an
143 agent, through the use of fraud, intimidation or undue
144 influence.

145 (11) Failing to keep written records justifying the
146 course of treatment of a patient, such records to include,
147 but not be limited to, patient histories, examination and
148 test results and treatment rendered, if any.

149 (12) Exercising influence on a patient in such a way
150 as to exploit the patient for financial gain of the phy-
151 sician or podiatrist or a third party. Any such influence
152 includes, but is not limited to, the promotion or sale of
153 services, goods, appliances or drugs.

154 (13) Prescribing, dispensing, administering, mixing
155 or otherwise preparing a prescription drug, including any
156 controlled substance under state or federal law, other
157 than in good faith and in a therapeutic manner in ac-
158 cordance with accepted medical standards and in the
159 course of the physician's or podiatrist's professional prac-
160 tice.

161 (14) Performing any procedure or prescribing any
162 therapy that, by the accepted standards of medical prac-
163 tice in the community, would constitute experimentation
164 on human subjects without first obtaining full, informed
165 and written consent.

166 (15) Practicing or offering to practice beyond the
167 scope permitted by law or accepting and performing
168 professional responsibilities that the person knows or
169 has reason to know he is not competent to perform.

170 (16) Delegating professional responsibilities to a per-
171 son when the physician or podiatrist delegating such
172 responsibilities knows or has reason to know that such
173 person is not qualified by training, experience or licen-
174 sure to perform them.

175 (17) Violating any provision of this article or a rule
176 or order of the board, or failing to comply with a sub-
177 poena or subpoena duces tecum issued by the board.

178 (18) Conspiring with any other person to commit an
179 act or committing an act that would tend to coerce, in-
180 timidate or preclude another physician or podiatrist from
181 lawfully advertising his services.

182 (19) Gross negligence in the use and control of pre-
183 scription forms.

184 (20) Professional incompetence.

185 (21) The inability to practice medicine and surgery or
186 podiatry with reasonable skill and safety due to physical
187 or mental disability, including deterioration through the
188 aging process or loss of motor skill or abuse of drugs
189 or alcohol. A physician or podiatrist adversely affected
190 under this subdivision shall be afforded an opportunity
191 at reasonable intervals to demonstrate that he can re-
192 sume the competent practice of medicine and surgery or
193 podiatry with reasonable skill and safety to patients.
194 In any proceeding under this subdivision, neither the
195 record of proceedings nor any orders entered by the
196 board shall be used against the physician or podiatrist
197 in any other proceeding.

198 (d) The board shall deny any application for a license
199 or other authorization to practice medicine and surgery
200 or podiatry in this state to any applicant who, and shall
201 revoke the license of any physician or podiatrist licensed
202 or otherwise lawfully practicing within this state who, is
203 found guilty by any court of competent jurisdiction of
204 any felony involving prescribing, selling, administering,
205 dispensing, mixing or otherwise preparing any prescrip-
206 tion drug, including any controlled substance under state
207 or federal law, for other than generally accepted thera-
208 peutic purposes. Presentation to the board of a certified
209 copy of the guilty verdict or plea rendered in the court
210 is sufficient proof thereof for the purposes of this article.
211 A plea of nolo contendere has the same effect as a verdict
212 or plea of guilt.

213 (e) The board may refer any cases coming to its at-
214 tention to an appropriate state committee of an ap-
215 propriate professional organization for investigation and
216 report. Any such report shall contain recommendations
217 for any necessary disciplinary measures and shall be
218 filed with the board within ninety days of any such
219 referral. The recommendations shall be considered by
220 the board and the case may be further investigated by
221 the board. The board after full investigation shall take
222 whatever action it deems appropriate, as provided here-
223 in.

224 (f) The investigating body, as provided for in sub-
225 section (e) of this section, may request and the board
226 under any circumstances may require a physician or
227 podiatrist or person applying for licensure or other
228 authorization to practice medicine and surgery or podi-
229 atry in this state to submit to a physical or mental ex-
230 amination by a physician or physicians approved by the
231 board. A physician or podiatrist submitting to any such
232 examination has the right, at his expense, to designate
233 another physician to be present at the examination and
234 make an independent report to the investigating body
235 or the board. The expense of the examination shall be
236 paid by the board. Any individual who applies for or
237 accepts the privilege of practicing medicine and surgery

238 or podiatry in this state is deemed to have given his
239 consent to submit to all such examinations when re-
240 quested to do so in writing by the board and to have
241 waived all objections to the admissibility of the testi-
242 mony or examination report of any examining phy-
243 sician on the ground that the testimony or report is
244 privileged communication. If a person fails or refuses
245 to submit to any such examination under circumstances
246 which the board finds are not beyond his control, such
247 failure or refusal is prima facie evidence of his inability
248 to practice medicine and surgery or podiatry competently
249 and in compliance with the standards of acceptable and
250 prevailing medical practice.

251 (g) In addition to any other investigators it employs,
252 the board may appoint one or more licensed physicians
253 to act for it in investigating the conduct or competence
254 of a physician.

255 (h) In every disciplinary or licensure denial action
256 the board shall furnish the physician or podiatrist or
257 applicant with written notice setting out with particu-
258 larity the reasons for its action. Disciplinary and licen-
259 sure denial hearings shall be conducted in accordance
260 with the provisions of article five, chapter twenty-nine-a
261 of this code. However, hearings shall be heard upon sworn
262 testimony and the rules of evidence for trial courts of
263 record in this state shall apply to all such hearings. A
264 transcript of all hearings under this section shall be
265 made, and the respondent may obtain a copy of the
266 transcript at his expense. The physician or podiatrist
267 has the right to defend against any such charge by the
268 introduction of evidence, the right to be represented
269 by counsel, the right to present and cross-examine wit-
270 nesses and the right to have subpoenas and subpoenas
271 duces tecum issued on his behalf for the attendance of
272 witnesses and the production of documents. Except for
273 private reprimands, the board shall make all its final
274 actions public. The order shall contain the terms of all
275 action taken by the board.

276 (i) Whenever it finds any person unqualified because

277 of any of the grounds set forth in subsection (c) of this
278 section, the board may enter an order imposing one or
279 more of the following:

280 (1) Deny his application for a license or other autho-
281 rization to practice medicine and surgery or podiatry;

282 (2) Administer a public or private reprimand;

283 (3) Suspend, limit or restrict his license or other
284 authorization to practice medicine and surgery or
285 podiatry for not more than five years, including limit-
286 ing the practice of such person to, or by the exclusion
287 of, one or more areas of practice, including limitations
288 on practice privileges;

289 (4) Revoke his license or other authorization to
290 practice medicine and surgery or podiatry or to prescribe
291 or dispense controlled substances;

292 (5) Require him to submit to care, counseling or treat-
293 ment designated by the board as a condition for initial
294 or continued licensure or renewal of licensure or other
295 authorization to practice medicine and surgery or podi-
296 atry;

297 (6) Require him to participate in a program of edu-
298 cation prescribed by the board; and

299 (7) Require him to practice under the direction of a
300 physician or podiatrist designated by the board for a
301 specified period of time.

302 (j) Notwithstanding the provisions of section eight,
303 article one, chapter thirty of this code, if the board deter-
304 mines the evidence in its possession indicates that a phy-
305 sician's or podiatrist's continuation in practice or unre-
306 stricted practice constitutes an immediate danger to the
307 public, the board may take any of the actions provided for
308 in subsection (i) of this section on a temporary basis and
309 without a hearing, if institution of proceedings for a hear-
310 ing before the board are initiated simultaneously with the
311 temporary action and begin within fifteen days of such ac-
312 tion. The board shall render its decision within five days of
313 the conclusion of a hearing under this subsection.

314 (k) Any person against whom disciplinary action is
315 taken pursuant to the provisions of this article has the
316 right of judicial review as provided in articles five and
317 six, chapter twenty-nine-a of this code. Except with
318 regard to an order of temporary suspension of a license
319 for six months or less, a person shall not practice
320 medicine and surgery or podiatry or deliver health care
321 services in violation of any disciplinary order revoking
322 or limiting his license while any such review is pend-
323 ing. Within sixty days the board shall report its final
324 action regarding restriction, limitation, suspension or
325 revocation of the license of a physician or podiatrist,
326 limitation on practice privileges or other disciplinary
327 action against any physician or podiatrist to all appro-
328 priate state agencies, appropriate licensed health facili-
329 ties and hospitals, insurance companies or associations
330 writing medical malpractice insurance in this state, the
331 American Medical Association, the American Podiatry
332 Association, professional societies of physicians or podi-
333 atrists in the state and any entity responsible for the
334 fiscal administration of medicare and medicaid.

335 (l) Any person against whom disciplinary action has
336 been taken under the provisions of this article shall at
337 reasonable intervals be afforded an opportunity to
338 demonstrate that he can resume the practice of medicine
339 and surgery or podiatry on a general or limited basis.
340 At the conclusion of a suspension, limitation or restric-
341 tion period, the physician or podiatrist has the right to
342 resume practice pursuant to the orders of the board: *Pro-*
343 *vided*, That for a revocation pursuant to subsection (d)
344 of this section a reapplication shall not be accepted for
345 a period of at least five years.

346 (m) Any entity, organization or person, including the
347 board, any member of the board, its agents or employees
348 and any entity or organization or its members referred
349 to in this article, any insurer, its agents or employees, a
350 medical peer review committee and a hospital govern-
351 ing board, its members or any committee appointed by
352 it acting without malice and without gross negligence
353 in making any report or other information available

354 to the board or a medical peer review committee pursu-
355 ant to law and any person, acting without malice and
356 without gross negligence who assists in the organization,
357 investigation or preparation of any such report or in-
358 formation or assists the board or a hospital governing
359 body or any such committee in carrying out any of its
360 duties or functions provided by law is immune from civil
361 or criminal liability, except that the unlawful disclosure
362 of confidential information possessed by the board is a
363 misdemeanor as provided for in this article.

364 (n) A physician or podiatrist may request in writing
365 to the board a limitation on or the surrendering of his
366 license to practice medicine and surgery or podiatry
367 or other appropriate sanction as provided herein. The
368 board may grant such request and if it considers it ap-
369 propriate, may waive the commencement or continua-
370 tion of other proceedings under this section. A physician
371 or podiatrist whose license is limited or surrendered or
372 against whom other action is taken under this subsection
373 has a right at reasonable intervals to petition for removal
374 of any restriction or limitation on or for reinstatement
375 of his license to practice medicine and surgery or
376 podiatry.

**§30-3-15. Medical corporations; podiatry corporations; applica-
tion for registration; fees; notice to secretary of
state of issuance of certificate; action by secretary
of state; rights and limitations generally; biennial
registration; when practice to cease; admissibility
and effect of certificate signed by secretary of
board; criminal penalty; severability.**

1 (a) When one or more physicians duly licensed to
2 practice medicine and surgery in this state or one or
3 more podiatrists duly licensed to practice podiatry in
4 this state wish to form a medical or podiatry corpora-
5 tion, respectively, such physician or physicians or podi-
6 atrist or podiatrists shall file a written application
7 therefor with the board on a form prescribed by it and
8 shall furnish proof satisfactory to the board that each
9 applicant is a duly licensed physician or podiatrist. A

10 fee, not to exceed five hundred dollars, the amount of
11 such fee to be set by the board, shall accompany each
12 application. Upon its determination that each applicant
13 is duly licensed, the board shall notify the secretary of
14 state that a certificate of authorization has been issued
15 to the person or persons making the application. When
16 the secretary of state receives such notification from
17 the board, he shall attach such authorization to the
18 corporation application and, upon compliance by the
19 corporation with the pertinent provisions of chapter
20 thirty-one of this code, shall notify the incorporators that
21 such corporation, through duly licensed physicians or
22 through duly licensed podiatrists, may engage in the prac-
23 tice of medicine and surgery or the practice of podiatry.

24 (b) A medical corporation may practice medicine and
25 surgery only through individual physicians duly licensed
26 to practice medicine and surgery in this state and a
27 podiatrist may practice podiatry only through indivi-
28 dual podiatrists duly licensed to practice podiatry in this
29 state, but such physicians or podiatrists may be em-
30 ployees rather than shareholders of such corporation,
31 and nothing herein contained shall be construed to re-
32 quire a license for or other legal authorization of any
33 individual employed by such corporation to perform
34 services for which no license or other legal authoriza-
35 tion is otherwise required. Nothing contained in this
36 article is meant or intended to change in any way the
37 rights, duties, privileges, responsibilities and liabilities
38 incident to the physician-patient or podiatrist-patient
39 relationship nor is it meant or intended to change in
40 any way the personal character of the physician-patient
41 or podiatrist-patient relationship. A corporation holding
42 such certificate of authorization shall register biennially,
43 on or before the thirtieth day of June, on a form pre-
44 scribed by the board, and shall pay an annual registration
45 fee not to exceed three hundred dollars, the amount of
46 such fee to be set by the board.

47 (c) A medical or podiatry corporation holding a
48 certificate of authorization shall cease to engage in the
49 practice of medicine and surgery or the practice of

50 podiatry upon being notified by the board that any of
51 its shareholders is no longer a duly licensed physician
52 or podiatrist, or when any shares of such corporation
53 have been sold or disposed of to a person who is not a duly
54 licensed physician or podiatrist: *Provided*, That the per-
55 sonal representative of a deceased shareholder shall have
56 a period, not to exceed twelve months from the date of
57 such shareholder's death, to dispose of such shares; but
58 nothing contained herein shall be construed as affecting
59 the existence of such corporation or its right to continue
60 to operate for all lawful purposes other than the prac-
61 tice of medicine and surgery or the practice of podiatry.

62 (d) No corporation shall practice medicine and surgery
63 or any of its branches, or hold itself out as being capable of
64 practicing medicine and surgery, or practice podiatry or
65 hold itself out as being capable of practicing podiatry,
66 without a certificate from the board; nor shall any corpora-
67 tion practice medicine and surgery or any of its branches
68 or hold itself out as being capable of practicing medicine
69 and surgery, or practice podiatry or hold itself out as being
70 capable of practicing podiatry, after its certificate has been
71 revoked, or if suspended, during the term of such suspen-
72 sion. A certificate signed by the secretary of the board to
73 which is affixed the official seal of the board to the effect
74 that it appears from the records of the board that no such
75 certificate to practice medicine and surgery or any of its
76 branches, or to practice podiatry, in the state has been is-
77 sued to any such corporation specified therein or that such
78 certificate has been revoked or suspended shall be admis-
79 sible in evidence in all courts of this state and shall be
80 prima facie evidence of the facts stated therein.

81 (e) Any officer, shareholder or employee of such
82 corporation who participates in a violation of any provi-
83 sion of this section shall be guilty of a misdemeanor,
84 and, upon conviction thereof, shall be fined not exceeding
85 one thousand dollars.

86 (f) If any provision of this section is held to be in-
87 valid, such invalidity shall not affect the other provi-
88 sions of this section which can be given effect without

89 such invalid provision, and to this end the provisions of
90 this section are severable.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistants as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Type A physician assistant" means an assistant
3 to a primary care physician who is a graduate of an
4 approved program of instruction in primary health care,
5 has passed the national certification examination and is
6 qualified to perform direct patient care services under
7 the supervision of the primary care physician;

8 (2) "Type B physician assistant" means an assistant
9 to a physician who is a graduate of an approved program
10 for instruction in a recognized clinical specialty or has
11 received training from a physician adequate to qualify
12 him to perform patient services in that specialty as de-
13 fined by the supervising physician;

14 (3) "Supervising physician" means a doctor of medi-
15 cine or podiatry permanently licensed in this state who
16 assumes legal and supervisory responsibility for the work
17 or training of any physician assistant under his super-
18 vision;

19 (4) "Approved program" means an educational pro-
20 gram for physician assistants approved and accredited
21 by the American Medical Association or American Podi-
22 atry Association; and

23 (5) "Health care facility" means any licensed hospital,
24 nursing home, extended care facility, state health or
25 mental institution, clinic or physician's office.

26 (b) The board shall promulgate rules and regulations
27 governing the extent to which physician assistants may
28 function in this state. Such regulations shall provide
29 that the physician assistant is limited to the performance
30 of those services for which he is trained and that he
31 performs only under the supervision and control of a
32 physician permanently licensed in this state, but such
33 supervision and control does not require the personal
34 presence of the supervising physician at the place or
35 places where services are rendered if the physician as-
36 sistant's normal place of employment is on the premises
37 of the supervising physician. The supervising physician
38 may send the physician assistant off the premises to
39 perform duties under his direction, but a separate place
40 of work for the physician assistant shall not be estab-
41 lished. In promulgating such rules and regulations, the
42 board shall allow the physician assistant to perform those
43 procedures and examinations submitted to it in the job
44 description required by subsection (g) of this section.
45 The board shall compile and publish an annual report
46 that includes a list of currently certified physician as-
47 sistants and their employers and location in the state; a
48 list of approved programs; the number of graduates
49 of such approved programs each year and the number
50 of physician assistants from other states practicing in
51 this state.

52 (c) The board shall certify as a Type A physician
53 assistant any person who files an application and fur-
54 nishes satisfactory evidence to it that he has met the
55 following standards:

56 (1) He is a graduate of an approved program of in-
57 struction in primary health care;

58 (2) He has passed the examination for a primary care
59 physician assistant and is certified by the national board
60 of medical examiners; and

61 (3) He is of good moral character.

62 The board may certify as a Type B physician assistant
63 any person who files an application and furnishes satis-

64 factory evidence to it that he has met the following
65 standards:

66 (1) He is a graduate of an approved program in a
67 recognized clinical specialty;

68 (2) He has received specialized training and experi-
69 ence from a physician adequate for him to perform
70 patient services in that specialty; and

71 (3) He is of good moral character.

72 Certification of an assistant to a physician practicing
73 the specialty of ophthalmology is not permitted or re-
74 quired under this section.

75 (d) When any graduate of an approved program sub-
76 mits an application to the board, accompanied by a
77 job description in conformity with subsection (g) of
78 this section, for a Type A physician assistant certi-
79 ficate, the board shall issue to such applicant a temporary
80 certificate allowing such applicant to function as a Type
81 A physician assistant for the period of one year. Said
82 temporary certificate may be renewed for one additional
83 year upon the request of the supervising physician. A
84 Type A physician assistant who has not been certified
85 as such by the National Board of Medical Examiners
86 will be restricted to work under the direct supervision
87 of the supervising physician.

88 When any person who meets the qualifications for a
89 Type B physician assistant as defined in this section and
90 who submits an application accompanied by a job des-
91 cription for a Type B physician assistant certificate, the
92 board may certify such applicant as a Type B physician
93 assistant for a period of four months. Upon expiration
94 of the four-month temporary certification, the board
95 may certify the applicant as a Type B physician assis-
96 tant. During the period of temporary certification, the
97 Type B physician assistant shall be restricted to work
98 under the direct supervision of the supervising physician.

99 (e) Certification of a Type B physician assistant is
100 subject to review and recertification annually for the
101 five years following the first certification. Recertification

102 requires a report from the supervising physician of a
103 Type B physician assistant which must include a per-
104 formance evaluation, a summary of experience or con-
105 tinuing medical education and any proposed change in
106 job description.

107 (f) The board may certify as a physician assistant in
108 this state without examination any person who has been
109 certified or licensed by examination in another state of
110 the United States which has requirements substantially
111 equivalent to the requirements of this section.

112 (g) Any physician applying to the board to supervise
113 either a Type A or Type B physician assistant shall
114 provide a job description that sets forth the range of
115 medical services to be provided by such assistant. Be-
116 fore a physician assistant can be employed or other-
117 wise use his skills, the supervising physician must ob-
118 tain approval of the job description from the board.
119 The board may revoke or suspend any certification of an
120 assistant to a physician for cause, after giving such per-
121 son an opportunity to be heard in the manner provided
122 by sections eight and nine, article one of this chapter.

123 (h) The supervising physician is responsible for ob-
124 serving, directing and evaluating the work, records and
125 practices of each physician assistant performing under
126 his supervision. He shall notify the board in writing
127 of any termination of his supervisory relationship with a
128 physician assistant within ten days of the termination.
129 The legal responsibility for any physician assistant re-
130 mains with the supervising physician at all times, in-
131 cluding occasions when the assistant under his direction
132 and supervision, aids in the care and treatment of a
133 patient in a health care facility. A health care facility
134 is not legally responsible for the actions or omissions
135 of the physician assistant unless the physician assistant
136 is an employee of the facility.

137 (i) When functioning as a physician assistant, the
138 physician assistant shall wear a name tag that identifies
139 him and specifies his type of classification and the name
140 of his supervising physician. A two and one-half by

141 three and one-half inch card of identification shall be
142 furnished by the board upon certification of the physi-
143 cian assistant and shall specify the type of classification.

144 (j) A supervising physician shall not supervise at
145 any one time more than two physician assistants.

146 A physician assistant shall not sign any prescription.
147 He shall not perform any service that his supervising
148 physician is not qualified to perform. He shall not per-
149 form any service that is not included in his job descrip-
150 tion and approved by the board as provided for in this
151 section.

152 The provisions of this section do not authorize any
153 physician assistant to perform any specific function or
154 duty delegated by this code to those persons licensed
155 as chiropractors, dentists, dental hygienists, optometrists
156 or pharmacists or certified as nurse anesthetists.

157 (k) Each job description submitted by a licensed
158 supervising physician shall be accompanied by a fee of
159 fifty dollars. A fee of five dollars shall be charged for the
160 annual renewal of the certificate.

161 (l) It is unlawful for any person who is not certified
162 by the board as a physician assistant to use the title of
163 "physician assistant" or to represent to any other per-
164 son that he is a physician assistant. Any person who
165 violates the provisions of this subsection is guilty of a
166 misdemeanor, and, upon conviction thereof, shall be
167 fined not more than two thousand dollars.

168 (m) It is unlawful for any physician assistant to repre-
169 sent to any person that he is a physician, surgeon or podi-
170 atrist. Any person who violates the provisions of this
171 subsection is guilty of a felony, and, upon conviction
172 thereof, shall be imprisoned in the penitentiary for not
173 less than one nor more than two years, or be fined not
174 more than two thousand dollars, or both fined and im-
175 prisoned.

§30-3-17. Limitation of article.

1 The practice of medicine and surgery by persons pos-

2 sassing the degree of doctor of osteopathy and authorized
3 by the laws of this state to practice medicine and surgery
4 shall in no way be affected by the provisions of this
5 article.

CHAPTER 84

(Com. Sub. for S. B. 603—By Mr. Nelson)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article seven, chapter twenty-seven of said code; and to amend and reenact section thirty-one, article five, chapter twenty-eight of said code, relating to involuntary commitment of mentally ill persons; providing for magistrates to order temporary detention, not to exceed twenty-four hours, of persons needing immediate protective detention pending presentation of application for involuntary commitment to circuit court or mental hygiene commissioner; relating to discharges from orders of commitment to mental health facilities and removing therefrom provisions for restoration of legal capacity as a result of such discharge; relating to the transfer of convicted persons from jails, prisons and other facilities to treatment facilities; providing for filing of application for transfer in certain circuit courts by chief correctional officer; providing for notice to the person and to the chief administrative officer of the facility to which transfer is sought and for the filing of objections; providing for appointment of counsel for indigent convicted persons; requiring certain procedures; requiring hearings when application is opposed; and providing for transfer upon finding by circuit court that needed treatment of convicted person is not available in penal facility but can be provided with necessary security at another facility.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article seven, chapter twenty-seven of said code be amended and reenacted; and that section thirty-one, article five, chapter twenty-eight of said code be amended and reenacted, all to read as follows:

Chapter

27. Mentally Ill Persons.

28. State Correctional and Penal Institutions.

CHAPTER 27. MENTALLY ILL PERSONS.

Article

5. Involuntary Hospitalization.

7. Release, Discharge, and Readmission of Patients; Escapees.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1 (a) *When application for involuntary custody for*
2 *examination may be made.*—Any adult person may make
3 application for involuntary hospitalization for examina-
4 tion of an individual when said person has reason to be-
5 lieve that:

6 (1) The individual is mentally ill, mentally retarded or
7 addicted, and

8 (2) That because of his mental illness, mental retarda-
9 tion or addiction, the individual is likely to cause serious
10 harm to himself or others if allowed to remain at liberty
11 while awaiting an examination and certification by a
12 physician or psychologist.

13 (b) *Oath; to whom application for involuntary custody*
14 *for examination is made; contents of application; custody;*
15 *probable cause hearing; examination.*

16 (1) The person making such application shall do so un-
17 der oath.

18 (2) Application for involuntary custody for examina-
19 tion may be made to the circuit court or mental hygiene
20 commissioner of the county in which the individual re-
21 sides, or of the county in which he may be found.

22 (3) The person making such application shall give such
23 information and state such facts therein as may be re-
24 quired, upon the form provided for this purpose by the
25 department of health.

26 (4) The circuit court or mental hygiene commissioner
27 may thereupon enter an order for the individual named
28 in such action to be detained and taken into custody, for
29 the purpose of holding a probable cause hearing described
30 in subdivision (5) of this subsection and for the purpose
31 of an examination of the individual by one physician or
32 one psychologist. The said order shall specify the se-
33 quence in which such hearing and examination shall
34 occur, shall require that such hearing be held forthwith,
35 and shall appoint counsel for the individual.

36 In the event immediate detention is believed to be
37 necessary for the protection of the individual or others at
38 a time when no circuit court judge or mental hygiene
39 commissioner is available for immediate presentation of
40 the application, a magistrate may accept the application
41 and, upon a finding that such immediate detention is
42 necessary pending presentation of the application to the
43 circuit court or mental hygiene commissioner, may order
44 the individual to be temporarily detained in custody until
45 the earliest reasonable time that the application can be
46 presented to the circuit court or mental hygiene commis-
47 sioner, which temporary period of detention shall not
48 exceed twenty-four hours.

49 (5) A probable cause hearing shall be held before a
50 magistrate, the mental hygiene commissioner or circuit
51 judge of the county of which the individual is a resident
52 or where he was found. If requested by the individual or
53 his counsel, the hearing may be postponed for a period
54 not to exceed forty-eight hours.

55 The individual must be present at the hearing and shall
56 have the right to present evidence, confront all witnesses

57 and other evidence against him, and to examine testi-
58 mony offered. The individual shall have the right to re-
59 main silent and to be proceeded against in accord with
60 the rules of evidence. At the conclusion of the hearing the
61 magistrate, mental hygiene commissioner or circuit court
62 shall find and enter an order stating whether or not there
63 is probable cause to believe that such individual as a
64 result of mental illness, mental retardation or addiction
65 is likely to cause serious harm to himself or others.

**ARTICLE 7. RELEASE, DISCHARGE, AND READMISSION OF
PATIENTS; ESCAPEES.**

§27-7-1. Discharge.

1 The chief medical officer of the mental health facility
2 shall continually review the case of each individual who
3 is an involuntary patient at the facility pursuant to article
4 five of this chapter and shall as frequently as practicable,
5 in any event at least once every three months, cause a
6 complete psychiatric examination of each patient, and
7 whenever it is determined that the conditions justifying
8 involuntary hospitalization no longer exist or that the
9 individual can no longer benefit from hospitalization, the
10 chief medical officer shall discharge the patient, and for-
11 ward a copy of the patient's discharge to the clerk of the
12 circuit court or mental hygiene commissioner of the
13 county in which the involuntary hospitalization was
14 ordered and to the circuit court or mental hygiene com-
15 missioner of the county wherein the individual is a
16 resident.

CHAPTER 28.

STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

**§28-5-31. Mentally diseased convicts; treatment; transfer be-
tween penal and mental health facilities; penal
facility procedures.**

1 (a) No person who is, or was considered to be,
2 mentally ill, mentally retarded or addicted shall be denied
3 parole or a parole hearing based upon such past or
4 present condition. In the event a convicted person is
5 deemed to be an appropriate candidate for parole, but

6 for a condition warranting involuntary hospitalization
7 such person shall be paroled and proceedings instituted
8 pursuant to section four, article five, chapter twenty-
9 seven of this code. Any time spent in such
10 facility shall be considered part of the term, and any
11 person whose sentence expires while receiving treatment
12 for a mental condition shall be discharged unless pro-
13 ceedings have been instituted and a determination made
14 pursuant to section four, article five, chapter twenty-
15 seven of this code.

16 (b) When a convicted person in a jail, prison, or
17 other facility is believed to be mentally ill, mentally re-
18 tardated or addicted, as those terms are defined in article
19 one, chapter twenty-seven of this code, and in need of
20 treatment, training or other services, the facts relating
21 to such illness, shall be presented to the chief administra-
22 tive officer of the facility. Such facts may be presented
23 by a correctional officer, member of a correctional insti-
24 tution medical staff, relative, or the convicted person.
25 Immediately upon receipt of such facts, the chief ad-
26 ministrative officer shall arrange for psychiatric or
27 psychological examination of the person alleged to be
28 so afflicted. If the report of the examination is to the
29 effect that the individual is mentally ill, mentally re-
30 tardated, or addicted and that treatment, training or other
31 services are required which cannot reasonably be pro-
32 vided at the correctional facility, the chief administrative
33 officer shall file within twenty days after presentation
34 of the facts an application for transfer with the clerk of
35 the circuit court of the county of location of the cor-
36 rectional facility. Such application for transfer shall in-
37 clude a statement of the nature of the treatment which
38 the person's condition warrants and the facility to which
39 transfer is sought.

40 Within ten days of receipt of the application from the
41 chief administrative officer, the mental hygiene commis-
42 sioner or circuit judge shall appoint counsel for the con-
43 victed person if the person is indigent.

44 The clerk of the circuit court shall forthwith notify
45 the convicted person, by certified mail, return receipt

46 requested, delivered only to addressee, that such appli-
47 cation has been filed, enclosing therewith a copy of the
48 application with an explanation of the place and purpose
49 of the transfer and the type of treatment to be afforded,
50 together with the name, address, and telephone number
51 of any appointed counsel. The person shall be afforded
52 reasonable telephone access to his counsel. The clerk
53 shall also notify the superintendent or other chief ad-
54 ministrative officer of the facility to which transfer is
55 sought. Within fifteen days after receipt of notice, the
56 convicted person, through counsel, shall file a verified
57 return admitting or denying the allegations and inform-
58 ing the court or mental hygiene commissioner as to
59 whether the respondent wishes to oppose the transfer.
60 Counsel shall file the return only after personal consulta-
61 tion with the convicted person. The superintendent of
62 the facility to which transfer is sought shall also file a
63 return within fifteen days of the receipt of notice, in-
64 forming the court or mental hygiene commissioner as
65 to whether the needed treatment or other services can
66 be provided within that facility. If said superintendent
67 objects to receiving the convicted person for treatment
68 or services, the reasons for such objection shall be speci-
69 fied in detail.

70 If the transfer is opposed by either the convicted person
71 or by the superintendent of the facility to which trans-
72 fer is sought, the matter shall forthwith be set for hear-
73 ing, in no event to exceed thirty days from the date of
74 the return opposing such transfer, and the clerk shall
75 provide to the convicted person, the superintendent of
76 the facility to which transfer is sought, and the super-
77 intendent of the correctional facility, at least ten days'
78 written notice, by certified mail, return receipt requested,
79 of the purpose, time and place of the hearing.

80 The convicted person shall be present at the hearing,
81 and be afforded an opportunity to testify and to present
82 and cross-examine witnesses. Counsel for the convicted
83 person shall be entitled to copies of all medical reports
84 upon request. The person shall have the right to an
85 examination by an independent expert of the person's
86 choice and testimony from such expert as a medical

87 witness on the person's behalf. The cost of providing such
88 medical expert shall be borne by the state if the person
89 is indigent. The person shall not be required to give
90 testimony which is self-incriminating. The circuit court
91 or mental hygiene commissioner shall hear evidence from
92 all parties, in accord with the rules of evidence. A trans-
93 cript or recording shall be made of all proceedings, and
94 transcript made available to the person within thirty
95 days, if the same is requested for the purpose of further
96 proceedings, and without cost if the person is indigent.

97 Upon completion of the hearing, and consideration of
98 the evidence presented therein, the circuit court or
99 mental hygiene commissioner shall make findings of
100 facts as to whether or not (1) the individual is mentally
101 ill, mentally retarded or addicted; (2) the individual be-
102 cause of mental illness, mental retardation or addiction
103 is likely to cause serious harm to self or others; (3) the
104 individual could not obtain the requisite treatment or
105 training at the correctional facility or another appropri-
106 ate correctional facility; and (4) the designated facility
107 to which transfer is sought could provide such treat-
108 ment or training with such security as the court finds
109 appropriate; and, if all such findings are in the affirmative,
110 the circuit court may order the transfer of such person
111 to the appropriate facility. The findings of fact shall be
112 incorporated into the order entered by the circuit court.
113 In all proceedings hereunder, proof of mental condition
114 and of likelihood of serious harm must be established
115 by clear, cogent and convincing evidence, and the likeli-
116 hood of serious harm must be based upon evidence of
117 recent overt acts.

CHAPTER 85

(H. B. 961—By Mr. Albright)

[Passed January 29, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section six, relating generally to the disposition of property of incompetents and the survival of powers of attorney executed prior to incompetency.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section six, to read as follows:

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-6. Survival of powers of attorney following disability or incompetence.

1 (a) The subsequent disability or incompetence of a prin-
2 cipal shall not revoke or terminate the authority of an attor-
3 ney-in-fact who acts under a power of attorney in a writing
4 executed by such principal prior to such disability or incom-
5 petence if such writing contains the words "This power of
6 attorney shall not be affected or terminated by the subse-
7 quent disability or incompetence of the principal," or words
8 of similar import clearly showing the intent of such principal
9 that the authority conferred in such writing shall be exer-
10 cisable notwithstanding the subsequent disability or incom-
11 petence of such principal.

12 (b) All acts done by an attorney-in-fact pursuant to a
13 power granted pursuant to subsection (a) of this section dur-
14 ing any period of disability or incompetence shall have the
15 same effect and inure to the benefit of and bind a principal
16 and his distributees, devisees, legatees and personal repre-
17 sentatives as if such principal were competent and not dis-
18 abled.

19 (c) The power and authority granted in this section to an
20 attorney-in-fact or other agent is terminated upon the appoint-
21 ment of a committee or conservator for the principal under
22 other provisions of this code.

23 (d) This section shall not be construed so as to alter or

- 24 affect any provision for revocation or termination contained in
25 any written power of attorney.

CHAPTER 86

(Com. Sub. for H. B. 928—By Mr. Caudle and Mr. Schifano)

Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article ten-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter fifty-eight of said code, all relating to mentally retarded and mentally handicapped persons generally; defining certain terms with respect thereto; providing for guardianships of mentally retarded and handicapped persons in the state; providing for applications to county commission by parents and interested persons, corporations and governmental agencies and by executors of estates of parents when directed by will to make application; providing for consent of parents unless parents cannot be located despite diligent efforts and use of all reasonable means; providing for powers and duties of guardians for control of the person, estate and moneys paid on behalf of such mentally retarded or handicapped persons; providing for duration of guardianship until terminated by county commission; requiring mentally retarded and mentally handicapped persons who are eighteen years of age or older to be present at hearings and providing for certain exceptions when such persons are not required to be present; providing for limited guardianships and standby guardianships; permitting nonprofit corporations to act as guardians, limited guardians and standby guardians of mentally retarded or mentally handicapped persons; giving the state director of health and the county commissions of the state powers, duties and responsibilities with respect thereto; relating to a certain licensure and certain compensation for certain corporations that are guardians; and providing for appeals to circuit courts from orders

of county commissions appointing and qualifying guardians and fiduciaries.

Be it enacted by the Legislature of West Virginia:

That article ten-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article three, chapter fifty-eight of said code, as amended, be amended and reenacted, all to read as follows:

Chapter

44. Administration of Estates and Trusts.

58. Appeal and Error.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED AND MENTALLY HANDICAPPED PERSONS.

- §44-10A-1. Guardianship of mentally retarded and mentally handicapped persons generally.
- §44-10A-2. Limited guardianship.
- §44-10A-3. Duration of guardianship.
- §44-10A-4. Standby guardianship.
- §44-10A-5. Application of other provisions.
- §44-10A-6. Guardianship by nonprofit corporations; authority; licensure; compensation.

§44-10A-1. Guardianship of mentally retarded and mentally handicapped persons generally.

1 When it shall appear to the satisfaction of the county com-
2 mission that a person is a mentally retarded person as defined
3 in section three, article one, chapter twenty-seven of this code,
4 or is otherwise mentally handicapped, that such condition is
5 certified as being permanent in nature by at least two physi-
6 cians licensed to practice medicine in this state or one such
7 physician and one licensed psychologist having qualifications to
8 make such certification and that such person requires in his
9 best interests the appointment of a guardian, the county com-
10 mission is authorized and empowered upon application of
11 both parents, natural or adoptive, if living, or upon applica-
12 tion of one such parent and the consent of the other, if living,

13 or upon application of the executor of the estate of the last
14 surviving parent of such person when directed to do so by the
15 last will and testament of such parent, or upon application of
16 any other interested person, corporation or governmental
17 agency, if the parents are not living, or if they both or one of
18 them be living, with the consent of such parents or surviving
19 parent, to appoint a guardian and to specify the powers and
20 duties the guardian shall exercise for the person of such per-
21 son, the estate of such person, and any moneys from any source
22 as may be paid on behalf of such person to the guardian or to
23 another party: *Provided*, That such consent of a parent shall
24 not be necessary if it is shown, upon oath or affirmation, that
25 such parent cannot be located to request such consent despite
26 the diligent efforts of applicant by use of all reasonable means
27 to do so. For the purposes of this chapter, "mentally handi-
28 capped person" shall mean any person with a condition medi-
29 cally determined which results in a substantial mental impair-
30 ment of general intellectual functioning and which results in
31 that person's inability to function normally in society for his
32 own best interests.

§44-10A-2. Limited guardianship.

1 When it shall appear to the satisfaction of the county com-
2 mission that such mentally retarded or mentally handicapped
3 person for whom an application for guardianship is made is
4 over the age of eighteen years and is wholly or substantially
5 self-supporting by means of his wages or earnings from em-
6 ployment, the county commission is authorized and empowered
7 to appoint a limited guardian for such mentally retarded or
8 mentally handicapped person who shall receive, manage,
9 disburse and account for only such property of said mentally
10 retarded or mentally handicapped person as shall be re-
11 ceived from other than the wages or earnings of said person.

12 The mentally retarded or mentally handicapped person for
13 whom a limited guardian has been appointed shall have the
14 right to receive and expend any and all wages or other earn-
15 ings of his employment and shall have the power to contract
16 or legally bind himself for any sum of money which in the
17 aggregate shall not exceed one month's wages or earnings

18 from such employment or the sum of three hundred dollars,
19 whichever is less, in any one month.

20 In all other respects the requirements, powers and duties
21 of a limited guardian shall be the same as those of a committee
22 as set forth in article eleven, chapter twenty-seven of this
23 code unless otherwise specified by the county commission. A
24 nonprofit corporation may serve as a limited guardian under
25 the conditions set forth in section six of this article.

§44-10A-3. Duration of guardianship.

1 Such guardianship shall not terminate at the age of majority
2 or upon marriage and such limited guardianship shall not
3 terminate upon marriage but shall continue during the life
4 of such mentally retarded or mentally handicapped person or
5 until terminated by the county commission. A person of the
6 age of eighteen or more years for whom a guardian has been
7 appointed and a person for whom a limited guardian has been
8 appointed may however petition the county commission
9 which made such appointment or the county commission of
10 his county of residence to have the guardianship or limited
11 guardianship terminated or, in the alternative, to have the
12 guardian or limited guardian discharged and a successor ap-
13 pointed, or to have the guardian designated as a limited
14 guardian.

15 Upon such a petition for review or upon a petition for
16 appointment of a guardian in the first instance for a mentally
17 retarded or mentally handicapped person over the age of
18 eighteen years or upon a petition for appointment of a limited
19 guardian in the first instance for any such person, the county
20 commission shall conduct a hearing at which such person
21 shall be present. Notwithstanding any requirement hereof to
22 the contrary such hearing may proceed without the presence
23 of the individual alleged to be mentally retarded or mentally
24 handicapped if (1) proper notice has been served upon the
25 party alleged to be mentally retarded or mentally handi-
26 capped, and (2) a duly licensed physician shall have certified
27 in writing and upon affidavit that he or she has examined
28 such individual and that such individual is physically unable
29 to appear at such hearing or that such an appearance would

30 likely impair or endanger the health of such individual, or
31 (3) such individual refuses to appear, and (4) upon the
32 specific written findings by such commission of facts as will
33 justify a hearing without the presence of such individual
34 as provided in this section.

§44-10A-4. Standby guardianship.

1 (a) Upon application or consent of both parents, natural
2 or adoptive, if living, or of the surviving parent, a standby
3 guardian of a mentally retarded or mentally handicapped
4 person may be appointed by the county commission. The
5 county commission may also upon application or consent of
6 such parents or surviving parent appoint an alternate to such
7 guardian to act if such guardian shall die or become incapa-
8 cited after the death of the last surviving parent of such
9 person or if such guardian shall renounce his appointment.

10 (b) Such standby guardian or alternate in the event of
11 such guardian's death or incapacity or his renunciation shall
12 without further proceedings be empowered to assume the dut-
13 ies of his office immediately upon death or adjudication of
14 incompetency of the last surviving of the natural or adoptive
15 parents of such mentally retarded or mentally handicapped
16 person, subject only to confirmation of his appointment by the
17 county commission within sixty days following his assumption
18 of his duties of office.

19 (c) After the appointment of a standby guardian, the coun-
20 ty commission shall have and retain general jurisdiction over
21 the mentally retarded or mentally handicapped person for
22 whom such guardian shall have been appointed to take of its
23 own motion or to entertain and adjudicate such steps and
24 proceedings relating to such standby guardianship as may be
25 deemed necessary or proper for the welfare of such person.

§44-10A-5. Application of other provisions.

1 To the extent that the context thereof shall admit, the
2 provisions of article ten of this chapter shall apply to all pro-
3 ceedings under this article with the same force and effect
4 as if a "child," a "ward" or a "minor" as therein referred to

5 were a "mentally retarded or mentally handicapped person" as
6 used in this article and as if "guardian" as therein referred to
7 were a "guardian of a mentally retarded or mentally handi-
8 capped person" as used in this article.

**§44-10A-6. Guardianship by nonprofit corporations; authority;
licensure; compensation.**

1 (a) A nonprofit corporation chartered in this state may
2 be appointed to serve as guardian, limited guardian or standby
3 guardian for a mentally retarded or mentally handicapped
4 person if it is licensed in accordance with the requirements
5 of subsection (b) of this section.

6 (b) The state director of health may license nonprofit
7 corporations that seek to serve as guardians for mentally
8 retarded or mentally handicapped persons. He shall promulgate
9 regulations for the licensure of such nonprofit corporations
10 and shall provide for the review of such licenses. The regul-
11 lations shall establish standards to assure that any corpora-
12 tion licensed for such guardianship meets the following
13 conditions:

14 (1) Has sufficient fiscal and administrative resources to
15 perform the fiduciary duties and make the reports and ac-
16 countings required by this chapter;

17 (2) Will respect and maintain the dignity and privacy of
18 the mentally retarded or mentally handicapped person;

19 (3) Will protect and advocate the legal human rights
20 of the mentally retarded or mentally handicapped person;

21 (4) Will assure that the mentally retarded or mentally
22 handicapped person is receiving appropriate educational, vo-
23 cational, residential and medical services in the setting least
24 restrictive of the individual's personal liberty;

25 (5) Will encourage the mentally retarded or mentally handi-
26 capped person to participate to the maximum extent of his
27 abilities in all decisions affecting him and to act in his own
28 behalf on all matters in which he is able to do so;

29 (6) Does not provide educational, vocational, residential

30 or medical services to the mentally retarded or mentally
31 handicapped person; and

32 (7) Has written provision for distribution of assets and
33 appointment of standby guardian for the mentally retarded or
34 mentally handicapped person in the event the corporation
35 ceases to be licensed by the state director of health or may
36 otherwise become unable to act as guardian.

37 (c) A duly licensed nonprofit corporation that has been
38 appointed a guardian pursuant to the provisions of this article
39 is entitled to compensation in accordance with the provisions
40 of section fourteen, article four of this chapter and is entitled
41 to be compensated for services performed as guardian of the
42 person as well as guardian of the estate.

43 (d) Except as provided in subsection (c) of this section, no
44 guardian or limited guardian nor any officer, agent, director,
45 servant or employee of any such guardian or limited guardian
46 shall do business with or in any way profit, either directly or
47 indirectly, from the estate or income of any mentally retarded
48 or mentally handicapped person for whom such guardian or
49 limited guardian serves.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 3. APPEALS FROM COUNTY COMMISSIONS.

§58-3-1. When appeal lies to circuit court.

1 An appeal shall lie to the circuit court of the county from
2 the final order of the county commission in the following
3 cases: (a) In cases of contested elections tried and determined
4 by such court; (b) in cases of contempt; (c) the establishment
5 and regulation of a road, way, bridge, public landing, ferry or
6 mill; (d) the probate of a will; (e) the appointment and quali-
7 fication of a personal representative, guardian, including, but
8 not limited to, all fiduciaries made pursuant to article ten-a,
9 chapter forty-four of this code, or committee, and the settle-
10 ment of their accounts; (f) in any other case by law specially
11 provided.

CHAPTER 87

(Com. Sub. for H. B. 1529—By Mr. Speaker, Mr. See, and Mr. Teets)

[Passed March 8, 1980; in effect upon the proclamation of the Governor finding that the approval of the West Virginia state program under section 503 of the federal "Surface Mine Control and Reclamation Act of 1977" has been given by the Secretary of the U. S. Department of the Interior. Approved by the Governor.]

AN ACT to amend and reenact articles six and six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixty-three, article two, chapter twenty-two of said code; to amend and reenact section two, article six of said chapter; and to amend and reenact section three, article six-a of said chapter, all relating to coal surface mining and the surface effects of deep mining of coal generally; establishing the West Virginia surface mining and reclamation act; short title; legislative findings and purpose; jurisdiction of the department of natural resources; authority of the director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation; promulgation of rules and regulations by reclamation commission; definitions; division of reclamation; authority, qualifications and compensation of division chief; duties and function of division; surface-mining reclamation supervisors and inspectors; appointment, qualifications and salary of supervisors and inspectors; duties of surface-mining reclamation inspectors and inspectors in training; reclamation commission; duties, authority, functions and compensation of commission; petition for issuance, amendment or repeal of a rule of the commission; notice of intention to prospect and requirements therefor; bonding; authority of director to deny or limit prospecting; postponement of reclamation; prohibited acts; exceptions; prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; termination of permits; permit fees; permit application requirements and contents; reclamation plan requirements; performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of liability; general environmental pro-

tection performance standards for surface mining; variances from standards; additional general environmental protection performance standards for the surface effects of underground mining; application of article to surface effects of underground mining; inspection; monitoring; right of entry; inspection of records; identification signs; progress maps; limitation of liability; cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal; notice of violation; procedures and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; prosecution; injunctive relief; approval, denial, revision and prohibition of permit; permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; operator reassignments; public notice; written objections; public hearings; informal conferences; decision of director on permit application, and hearing thereon; designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable; appointment and organization of reclamation board of review; authority; compensation, expenses and removal of board members; appeals to the board; hearings before board; subpoena and subpoena duces tecum; records, findings and orders of the board; appeal from order of board; judicial review; temporary relief from order of board; release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release; water rights and replacement; waiver of replacement; citizen suits; order of court; damages; surface-mining operations not subject to this article; leasing of lands owned by state for surface mining of coal; special permits for removal of coal incidental to development of land; application; bond; reclamation plan for existing abandoned coal processing waste piles; existing permits and performance bond conversion; exemption from design criteria; experimental practices; certification and training of blasters; certification of surface miners and surface-mine foreman; monthly report by operator; applicability and enforcement of laws safeguarding life and property; regulations pertaining to safety; authority of department of mines regarding safety laws; conflicting provisions;

conflict of interest prohibited, and criminal penalties therefor; employee protection; severability; validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977; application of article to operations under permit issued hereunder; abandoned mine lands and reclamation act; short title; legislative findings, intent and purpose of article; jurisdiction and authority of director of department of natural resources; definitions; abandoned land reclamation fund; objectives of fund; lands eligible for reclamation; powers and duties of director; program plans and reclamation projects; acquisition and reclamation of land adversely affected by past coal surface-mining practices; liens against reclaimed land; petition by landowner; appeal; priority of liens; filling voids and sealing tunnels; general and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds; interagency cooperation; prior approval of director of department of mines for the opening or reopening of mines; approval fee; inspection by director of department of mines; definition of terms relating to certification of underground and surface coal miners; and definition of terms relating to the board of miner training, education and certification.

Be it enacted by the Legislature of West Virginia:

That articles six and six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixty-three, article two, chapter twenty-two of said code, be amended and reenacted; that section two, article six of said chapter be amended and reenacted; and that section three, article six-a of said chapter be amended and reenacted, all to read as follows:

Chapter

20. Natural Resources.

22. Mines and Minerals.

CHAPTER 20. NATURAL RESOURCES.

Article

6. West Virginia Surface Coal Mining and Reclamation Act.

6.C. Abandoned Mine Reclamation Act.

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

- §20-6-1. Short title.
- §20-6-2. Legislative findings and purpose; jurisdiction vested in department of natural resources; authority of director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation.
- §20-6-3. Definitions.
- §20-6-4. Division of reclamation; qualifications and compensation of division chief; duties and functions of division.
- §20-6-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
- §20-6-6. Duties of surface-mining reclamation inspectors and inspectors in training.
- §20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.
- §20-6-8. Notice of intention to prospect, requirements therefor; bonding; director's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.
- §20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.
- §20-6-10. Permit application requirements and contents.
- §20-6-11. Reclamation plan requirements.
- §20-6-12. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.
- §20-6-13. General environmental protection performance standards for surface mining; variances.
- §20-6-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.
- §20-6-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.
- §20-6-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal.
- §20-6-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; prosecution; injunctive relief.
- §20-6-18. Approval, denial, revision and prohibition of permit.

- §20-6-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; operator reassignment.
- §20-6-20. Public notice; written objections; public hearings; informal conferences.
- §20-6-21. Decision of director on permit application; hearing thereon.
- §20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.
- §20-6-23. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.
- §20-6-24. Appeals to board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of board.
- §20-6-25. Appeal from order of board; judicial review; temporary relief.
- §20-6-26. Release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.
- §20-6-27. Water rights and replacement; waiver of replacement.
- §20-6-28. Citizen suits; order of court; damages.
- §20-6-29. Surface-mining operations not subject to article.
- §20-6-30. Leasing of lands owned by state for surface mining of coal.
- §20-6-31. Special permits for removal of coal incidental to development of land; prohibited acts; application bond; reclamation for existing abandoned coal processing waste piles.
- §20-6-32. Existing permits and performance bond conversion; exemption from design criteria.
- §20-6-33. Experimental practices.
- §20-6-34. Certification and training of blasters.
- §20-6-35. Surface miner certification required.
- §20-6-36. Certification of surface-mine foremen.
- §20-6-37. Monthly report by operator.
- §20-6-38. Applicability and enforcement of laws safeguarding life and property; regulations; authority of department of mines regarding safety laws.
- §20-6-39. Conflicting provisions.
- §20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.
- §20-6-41. Severability.

§20-6-42. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.

§20-6-1. Short title.

- 1 This article shall be known and cited as the "West Virginia
- 2 Surface Coal Mining and Reclamation Act."

§20-6-2. Legislative findings and purpose; jurisdiction vested in department of natural resources; authority of director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation.

- 1 (a) The Legislature finds that it is essential to the economic
- 2 and social well-being of the citizens of the state of West Vir-
- 3 ginia to strike a careful balance between the protection of the
- 4 environment and the economical mining of coal needed to meet
- 5 energy requirements.

6 Further, the Legislature finds that there is great diversity
7 in terrain, climate, biological, chemical and other physical
8 conditions in parts of this nation where mining is conducted;
9 that the state of West Virginia in particular needs an environ-
10 mentally sound and economically healthy mining industry;
11 and by reason of the above it may be necessary for
12 the reclamation commission herein established to promul-
13 gate regulations which vary from federal regulations as is
14 provided for in sections 101 (f) and 201 (c) (9) of the Surface
15 Mining Control and Reclamation Act of 1977 "Public Law
16 95-87."

17 Further, the Legislature finds that unregulated surface coal
18 mining operations may result in disturbances of surface and
19 underground areas that burden and adversely affect commerce,
20 public welfare and safety by destroying or diminishing the
21 utility of land for commercial, industrial, residential, recrea-
22 tional, agricultural and forestry purposes; by causing erosion
23 and landslides; by contributing to floods; by polluting the water
24 and river and stream beds; by destroying fish, aquatic life and
25 wildlife habitats; by impairing natural beauty; by damaging the
26 property of citizens; by creating hazards dangerous to life and

27 property; and by degrading the quality of life in local commu-
28 nities, all where proper mining and reclamation is not practiced.

29 (b) Therefore, it is the purpose of this article to:

30 (1) Expand the established and effective statewide pro-
31 gram to protect the public and the environment from the ad-
32 verse effects of surface-mining operations;

33 (2) Assure that the rights of surface and mineral owners
34 and other persons with legal interest in the land or appurte-
35 nances to land are adequately protected from such operations;

36 (3) Assure that surface-mining operations are not conducted
37 where reclamation as required by this article is not feasible;

38 (4) Assure that surface mining operations are conducted
39 in a manner to adequately protect the environment;

40 (5) Assure that adequate procedures are undertaken to
41 reclaim surface areas as contemporaneously as possible with
42 the surface mining operations;

43 (6) Assure that adequate procedures are provided for pub-
44 lic participation where appropriate under this article;

45 (7) Assure the exercise of the full reach of state common
46 law, statutory and constitutional powers for the protection of
47 the public interest through effective control of surface mining
48 operations; and

49 (8) Assure that the coal production essential to the nation's
50 energy requirements and to the state's economic and social
51 well-being is provided.

52 (c) In recognition of these findings and purposes, the
53 Legislature hereby vests authority in the reclamation commis-
54 sion of the department of natural resources to:

55 (1) Administer and enforce the provisions of this article
56 as it relates to surface mining to accomplish the purposes of
57 this article;

58 (2) Conduct hearings and conferences or appoint persons
59 to conduct them in accordance with this article;

60 (3) Promulgate, administer and enforce regulations pursuant
61 to this article;

62 (4) Enter into a cooperative agreement with the secretary
63 of the United States department of the interior to provide for
64 state regulations of surface-mining operations on federal lands
65 within West Virginia consistent with section 523 of Public
66 Law 95-87; and

67 (5) Administer and enforce regulations promulgated pur-
68 suant to this chapter to accomplish the requirements of pro-
69 grams under Public Law 95-87.

70 (d) The director of the department of natural resources and
71 the director of the department of mines shall cooperate with
72 respect to departmental programs and records to effect an
73 orderly and harmonious administration of the provisions of
74 this article. The director of the department of natural resources
75 may avail himself of any services which may be provided by
76 other state agencies in this state and other states or by agen-
77 cies of the federal government, and may reasonably compen-
78 sate them for such services. Also, he may receive any federal
79 funds, state funds or any other funds, and enter into coopera-
80 tive agreements, for the reclamation of land affected by surface
81 mining.

§20-6-3. Definitions.

1 As used in this article, unless used in a context that clearly
2 requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water by
4 physical, chemical or other approved methods in a manner so
5 that the treated water shall not lower the water quality
6 standards established for the river, stream or drainway into
7 which such water is released.

8 (b) "Affected area" means, when used in the context of
9 surface mining activities, all land and water resources within
10 the permit area which are disturbed or utilized during the
11 term of the permit in the course of surface mining and reclama-

12 tion activities. "Affected area" means, when used in the
13 context of underground mining activities, all surface land and
14 water resources affected during the term of the permit (1)
15 by surface operations or facilities incident to underground
16 mining activities or (2) by underground operations.

17 (c) "Adjacent areas" means, for the purpose of permit ap-
18 plication, renewal, revision, review and approval, those land
19 and water resources, contiguous to or near a permit area,
20 upon which surface-mining and reclamation operations con-
21 ducted within a permit area during the life of such operations
22 may have an impact. "Adjacent areas" means, for the
23 purpose of conducting surface-mining and reclamation oper-
24 ations, those land and water resources contiguous to
25 or near the affected area upon which surface-mining and
26 reclamation operations conducted within a permit area during
27 the life of such operations may have an impact.

28 (d) "Applicant" means any person who has or should have
29 applied for any permit pursuant to this article.

30 (e) "Approximate original contour" means that surface
31 configuration achieved by the backfilling and grading of the
32 disturbed areas so that the reclaimed area, including any
33 terracing or access roads, closely resembles the general
34 surface configuration of the land prior to mining and blends
35 into and complements the drainage pattern of the surrounding
36 terrain, with all highwalls and spoil piles eliminated:
37 *Provided*, That water impoundments may be permitted pur-
38 suant to subdivision (8), subsection (b), section thirteen of
39 this article: *Provided, however*, That minor deviations may be
40 permitted in order to minimize erosion and sedimentation,
41 retain moisture, to assist revegetation, or to direct surface
42 runoff.

43 (f) "Breakthrough" means the release of water which has
44 been trapped or impounded, or the release of air into any
45 underground cavity, pocket or area as a result of surface-
46 mining operations.

47 (g) "Coal processing wastes" means earth materials which
48 are or have been combustible, physically unstable, or acid-
49 forming or toxic-forming, which are wasted or otherwise

50 separated from product coal, and slurried or otherwise trans-
51 ported from coal processing plants after physical or chemical
52 processing, cleaning, or concentrating of coal.

53 (h) "Department" means the department of natural
54 resources.

55 (i) "Director" means the director of the department of
56 natural resources, deputy directors, the chief of the
57 division of reclamation, the assistant chiefs of the
58 division of reclamation and all duly authorized surface-
59 mining reclamation supervisors, or inspectors and inspectors
60 in training.

61 (j) "Disturbed area" means an area where vegetation,
62 topsoil, or overburden has been removed by surface-mining
63 operations, and reclamation is incomplete.

64 (k) "Imminent danger to the health or safety of the public"
65 means the existence of such condition or practice, or any
66 violation of a permit or other requirement of this article,
67 which condition, practice or violation could reasonably
68 be expected to cause substantial physical harm or death to any
69 person outside the permit area before such condition, practice
70 or violation can be abated. A reasonable expectation of death
71 or serious injury before abatement exists if a rational person,
72 subjected to the same conditions or practices giving rise to the
73 peril, would not expose himself to the danger during the time
74 necessary for the abatement.

75 (l) "Minerals" means clay, coal, flagstone, gravel, lime-
76 stone, manganese, sand, sandstone, shale, iron ore and any
77 other metal or metallurgical ore.

78 (m) "Operation" means those activities conducted by an
79 operator who is subject to the jurisdiction of this article.

80 (n) "Operator" means any person who is granted or who
81 should obtain a permit to engage in any activity covered by
82 this article.

83 (o) "Permit" means a permit to conduct surface-mining
84 operations pursuant to this article.

85 (p) "Permit area" means the area of land indicated on

86 the approved proposal map submitted by the operator as part
87 of his application showing the location of perimeter markers
88 and monuments and shall be readily identifiable by appropriate
89 markers on the site.

90 (q) "Permittee" means a person holding a permit issued
91 under this article.

92 (r) "Person" means any individual, partnership, firm,
93 society, association, trust, corporation, other business entity
94 or any agency, unit or instrumentality of federal, state or
95 local government.

96 (s) "Prime farmland" has the same meaning as that
97 prescribed by the United States secretary of agriculture on
98 the basis of such factors as moisture availability, tem-
99 perature regime, chemical balance, permeability, surface lay-
100 er composition, susceptibility to flooding and erosion
101 characteristics, and which historically have been used for
102 intensive agricultural purposes and as published in the
103 Federal Register.

104 (t) "Surface mine," "surface mining" or "surface-mining
105 operations" means:

106 (1) Activities conducted on the surface of lands for
107 the removal of coal, or, subject to the requirements of
108 section fourteen of this article, surface operations and
109 surface impacts incident to an underground coal mine,
110 including the drainage and discharge therefrom. Such
111 activities include excavation for the purpose of obtain-
112 ing coal, including, but not limited to, such common
113 methods as contour, strip, auger, mountaintop removal,
114 box cut, open pit and area mining; the uses of ex-
115 plosives and blasting; reclamation and in situ distillation
116 or retorting, leaching or other chemical or physical
117 processing; and the cleaning, concentrating, or other pro-
118 cessing or preparation, loading of coal for commercial
119 purposes at or near the mine site; and

120 (2) The areas upon which the above activities occur
121 or where such activities disturb the natural land sur-
122 face. Such areas shall also include any adjacent land,

123 the use of which is incidental to any such activities;
124 all lands affected by the construction of new roads or
125 the improvement or use of existing roads to gain access
126 to the site of such activities and for haulage; and ex-
127 cavations, workings, impoundments, dams, ventilation shafts,
128 entryways, refuse banks, dumps, stockpiles, overburden
129 piles, spoil banks, culm banks, tailings, holes or de-
130 pressions, repair areas, storage areas, processing areas,
131 shipping areas and other areas upon which are sited
132 structures, facilities, or other property or materials on the
133 surface, resulting from or incident to such activities: *Pro-*
134 *vided*, That such activities do not include the extraction of
135 coal incidental to the extraction of other minerals where coal
136 does not exceed sixteen and two-thirds percent of the tonnage
137 of minerals removed for purposes of commercial use or sale,
138 or coal prospecting subject to section eight of this article:
139 *Provided, however*, That permanent facilities not within the
140 area being mined and not directly involved in the excavation,
141 loading, storage or processing of the coal shall not be subject
142 to the provisions of this article. Such facilities include, but
143 are not limited to, offices, garages, bathhouses, parking areas,
144 and maintenance and supply areas.

145 (u) "Underground mine" means the surface effects asso-
146 ciated with the shaft, slopes, drifts or inclines connected with
147 excavations penetrating coal seams or strata and the equipment
148 connected therewith which contribute directly or indirectly to
149 the mining, preparation or handling of coal.

150 (v) "Significant, imminent environmental harm to land,
151 air or water resources" means the existence of any condition
152 or practice, or any violation of a permit or other requirement
153 of this article, which condition, practice or violation could
154 reasonably be expected to cause significant and imminent en-
155 vironmental harm to land, air or water resources. The term
156 "environmental harm" means any adverse impact on land,
157 air or water resources, including, but not limited to, plant,
158 wildlife, and fish, and the environmental harm is imminent
159 if a condition or practice exists which is causing such harm
160 or may reasonably be expected to cause such harm at any
161 time before the end of the abatement time set by the director.

162 An environmental harm is significant if that harm is appre-
163 ciable and not immediately repairable.

§20-6-4. Division of reclamation; qualifications and compensation of division chief; duties and functions of division.

1 There is hereby created within the department of natural
2 resources a division of reclamation, and the director of natural
3 resources shall appoint and fix the compensation of the head
4 of said division who shall be known as the chief of the division
5 of reclamation. Said chief shall have graduated from an accredi-
6 ted four-year college or university with a degree in the field of
7 engineering, agriculture, forestry or related resource field, and
8 shall have four years of full-time paid employment in some
9 phase of natural resources management, two years of which
10 must have been in a supervisory or administrative capacity.

11 Except as otherwise provided in this article, the division shall
12 administer the provisions of this article relating to surface
13 mining operations and subject to the approval of the director
14 shall exercise all of the powers and perform all of the duties
15 by law vested in and imposed upon said director in relation
16 to said operations. The division of reclamation shall have
17 within its jurisdiction and supervision all lands and areas of
18 the state, mined or susceptible of being mined, for the removal
19 of coal and all other lands and areas of the state deforested,
20 burned over, barren or otherwise denuded, unproductive and
21 subject to soil erosion and waste. Included within such lands
22 and areas shall be lands seared and denuded by chemical
23 operations and processes, abandoned coal mining areas,
24 swamplands, lands and areas subject to flowage easements
25 and backwaters from river locks and dams, and river, stream,
26 lake and pond shore areas subject to soil erosion and waste.
27 The jurisdiction and supervision exercised by the division shall
28 be consistent with other provisions of this chapter. The divi-
29 sion shall cooperate with other offices and divisions of the
30 department.

§20-6-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

1 The director shall determine the number of surface-mining
2 reclamation supervisors and inspectors needed to carry out

3 the purposes of this article and appoint them as such. All
4 such appointees shall be qualified civil service employees, but
5 no person shall be eligible for such appointment until he
6 has served in a probationary status for a period of one year
7 to the satisfaction of the director of natural resources.

8 Every surface-mining reclamation supervisor or inspector
9 shall be paid not less than fifteen thousand dollars per year.

§20-6-6. Duties of surface-mining reclamation inspectors and inspectors in training.

1 Except as otherwise provided in this article, surface-mining
2 reclamation inspectors and inspectors-in-training shall make
3 all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. Such inspectors shall note and describe all violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

§20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.

1 (a) There is hereby created and established in the
2 department of natural resources a reclamation commission
3 which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, the chief of the water resources division, and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for expenses necessarily incurred in performing their functions. The commission shall meet upon the call of any member. The director shall request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and ap-

15 point one or more assistant attorneys general, to serve at
16 the will and pleasure of the attorney general, and such
17 assistant or assistants, shall be paid out of any funds made
18 available for that purpose by the Legislature or by Public
19 Laws 95-87 to the department of natural resources.

20 (b) The commission shall have authority to:

21 (1) Promulgate rules and regulations, in accordance with
22 the provisions of chapter twenty-nine-a of this code, to
23 implement the provisions of this article: *Provided*, That the
24 commission shall give notice by publication of the public
25 hearing required in article three of chapter twenty-nine-a
26 of this code: *Provided, however*, That any forms, handbooks
27 or similar materials having the effect of a rule or regulation
28 as defined in article three of chapter twenty-nine-a of this
29 code, or issued, developed or distributed by the director
30 pursuant to or as a result of a rule or regulation, shall be
31 subject to the provisions of article three, chapter twenty-
32 nine-a of this code;

33 (2) Make investigations or inspections necessary to ensure
34 complete compliance with the provisions of this article;

35 (3) Conduct hearings or appoint persons to conduct hear-
36 ings under provisions of this article or rules and regulations
37 adopted by the commission; and for the purpose of any
38 investigation or hearing hereunder, the commission, any
39 member, or any appointee thereof may administer oaths or
40 affirmations, subpoena witnesses, compel their attendance,
41 take evidence and require production of any books, papers,
42 correspondence, memoranda, agreements, or other documents
43 or records relevant or material to the inquiry;

44 (4) Enforce, through the director, the provisions of this
45 article as provided herein; and

46 (5) Appoint such advisory committees as may be of assist-
47 ance to the commission in the development of programs and
48 policies: *Provided*, That such advisory committees shall, in
49 each instance, include members representative of the general
50 public.

51 (c) (1) After the commission has adopted the regulations

52 required by this article, any person may petition the com-
53 mission to initiate a proceeding for the issuance, amendment,
54 or repeal of a rule under this article.

55 (2) Such petitions shall be filed in the office of the com-
56 mission and shall set forth the facts which support the
57 issuance, amendment, or repeal of a rule under this article.

58 (3) The commission may hold a public hearing or may
59 conduct such investigation or proceeding as the commission
60 deems appropriate in order to determine whether or not such
61 petition should be granted.

62 (4) Within ninety days after filing of a petition described
63 in subdivision (1) of this subsection, the commission shall
64 either grant or deny the petition. If the commission grants the
65 petition, the commission shall promptly commence an ap-
66 propriate proceeding in accordance with the provisions of
67 chapter twenty-nine-a of this code. If the commission denies
68 such petition, the commission shall so notify the petitioner
69 in writing setting forth the reasons for such denial.

**§20-6-8. Notice of intention to prospect, requirements therefor;
bonding; director's authority to deny or limit; postpone-
ment of reclamation; prohibited acts; exceptions.**

1 (a) Any person intending to prospect for coal in an area
2 not covered by a surface mining permit, in order to determine
3 the location, quantity or quality of a natural coal deposit,
4 making feasibility studies or for any other purpose, shall file
5 with the director, at least fifteen days prior to commencement of
6 any disturbance associated with prospecting, a notice of inten-
7 tion to prospect, which notice shall include a description of the
8 prospecting area, the period of supposed prospecting and such
9 other information as required by rules or regulations promul-
10 gated pursuant to this section: *Provided*, That prior to the
11 commencement of such prospecting, the director may issue an
12 order denying or limiting permission to prospect where he
13 finds that prospecting operations will damage or destroy a
14 unique natural area, or will cause serious harm to water qual-
15 ity, or that the operator has failed to satisfactorily reclaim
16 other prospecting sites, or that there has been an abuse of
17 prospecting by previous prospecting operations in the area.

18 (b) Notice of intention to prospect shall be made in writing
19 on forms prescribed by the director and shall be signed and
20 verified by the applicant. The notice shall be accompanied by:
21 (1) A United States geological survey topographic map show-
22 ing by proper marking the crop line and the name, where
23 known, of the seam or seams to be prospected, and (2) a bond,
24 or cash, or collateral securities or certificates of the same type
25 and form and in the same manner as provided in section twelve
26 of this article, in the amount of five hundred dollars per acre
27 or fraction thereof for the total estimated disturbed area. If
28 such bond is used, it shall be payable to the state of West
29 Virginia and conditioned that the operator shall faithfully per-
30 form the requirements of this article as they relate to back-
31 filling and revegetation of the disturbed area.

32 (c) Any person prospecting under the provisions of this
33 section shall ensure that such prospecting operation is conduct-
34 ed in accordance with the performance standards in section
35 thirteen of this article for all lands disturbed in explorations,
36 including excavations, roads, drill holes, and the removal of
37 necessary facilities and equipment.

38 (d) Information submitted to the director pursuant to this
39 section as confidential, concerning trade secrets or privileged
40 commercial or financial information, which relates to the com-
41 petitive rights of the person or entity intended to prospect
42 the described area, shall not be available for public examina-
43 tion.

44 (e) Any person who conducts any prospecting activities
45 which substantially disturb the natural land surface in violation
46 of this section or regulations issued pursuant thereto shall be
47 subject to the provisions of sections sixteen and seventeen of
48 this article.

49 (f) No operator shall remove more than two hundred and
50 fifty tons of coal without the specific written approval of the
51 director.

52 (g) The bond accompanying said notice of intention to pro-
53 spect shall be released by the director when the operator dem-
54 onstrates that a permanent species of vegetative cover is es-
55 tablished.

56 (h) In the event an operator desires to mine the area cur-
57 rently being prospected, and has requested and received an
58 appropriate surface mine application (S.M.A.) number the
59 director may permit the postponement of the reclamation of
60 the area prospected. Any part of a prospecting operation,
61 where reclamation has not been postponed as provided above,
62 shall be reclaimed within a period of three months from
63 disturbance.

64 (i) For the purpose of this section, the word "prospect"
65 or "prospecting" does not include core drilling related solely
66 to taxation or highway construction.

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations unless
2 such person has first obtained a permit from the director in
3 accordance with the following:

4 (a) Within two months after the secretary of the interior ap-
5 proves a permanent state program for West Virginia, all
6 surface-mining operators shall file an application for a per-
7 mit or modification of a valid existing permit or underground
8 opening approval relating to those lands to be mined eight
9 months after that approval.

10 (b) No later than eight months after the secretary's approval
11 of a permanent state program for West Virginia, no person may
12 engage in or carry out, on lands within this state, any
13 surface-mining operations unless such person has first
14 obtained a permit from the director; *Provided*, That those
15 persons conducting such operations under a permit or
16 underground opening approval issued in accordance with
17 section 502 (c) of Public Law 95-87, and in compliance
18 therewith, may conduct such operations beyond such period
19 if an application for a permit or modification of a valid
20 existing permit or underground opening approval was filed
21 within two months after the secretary's approval, and the
22 administrative decision pertaining to the granting or denying
23 of such permit has not been made by the director.

24 (c) All permits issued pursuant to the requirements of
25 this article shall be issued for a term not to exceed five
26 years: *Provided*, That if the applicant demonstrates that a
27 specified longer term is reasonably needed to allow the ap-
28 plicant to obtain necessary financing for equipment and
29 the opening of the operation, and if the application is full
30 and complete for such specified longer term, the director
31 may extend a permit for such longer term: *Provided, further*,
32 That subject to the prior approval of the director, a suc-
33 cessor in interest to a permittee who applies for a new
34 permit within thirty days of succeeding to such interest, and
35 who is able to obtain the bond coverage of the original
36 permittee, may continue surface-mining and reclamation oper-
37 ations according to the approved mining and reclamation
38 plan of the original permittee until such successor's applica-
39 tion is granted or denied.

40 (d) Proof of insurance shall be required on an annual
41 basis.

42 (e) A permit shall terminate if the permittee has not
43 commenced the surface-mining operations covered by such
44 permit within three years of the date the permit was issued:
45 *Provided*, That the director may grant reasonable extensions
46 of time upon a showing that such extensions are necessary by
47 reason of litigation precluding such commencement, or threat-
48 ening, substantial economic loss to the permittee, or by
49 reason of conditions beyond the control and without the
50 fault or negligence of the permittee: *Provided further*, That
51 with respect to coal to be mined for use in a synthetic fuel
52 facility or specific major electric generating facility, the per-
53 mittee shall be deemed to have commenced surface-mining
54 operations at such time as the construction of the synthetic
55 fuel or generating facility is initiated.

56 (f) Each application for a new surface-mining permit
57 filed pursuant to this article shall be accompanied by a fee
58 of five hundred dollars. All permit fees provided for in this
59 section or elsewhere in this article shall be collected by the
60 director and deposited with the treasurer of the state of West
61 Virginia to the credit of the operating permit fees fund and

62 shall be used, upon requisition of the director, for the ad-
63 ministration of this article.

§20-6-10. Permit application requirements and contents.

1 (a) The surface-mining permit application shall contain:

2 (1) The names and addresses of: (A) The permit
3 applicant; (B) the owner of record of the property, surface
4 and mineral, to be mined; (C) the holders of record of any
5 leasehold interest in the property; (D) any purchaser of
6 record of the property under a real estate contract; (E) the
7 operator, if he is a person different from the applicant; and
8 (F) if any of these are business entities other than a single
9 proprietor, the names and addresses of the principals, officers
10 and resident agent;

11 (2) The names and addresses of the owners of record of
12 all surface and subsurface areas contiguous to any part of the
13 proposed permit area: *Provided*, That all residents living on
14 property contiguous to the proposed permit area shall be noti-
15 fied by the applicant, by registered or certified mail, of such
16 application on or before the first day of publication of the not-
17 ice provided for in subdivision (6) of this subsection.

18 (3) A statement of any current surface-mining permits held
19 by the applicant in this state and the permit number and
20 each pending application;

21 (4) If the applicant is a partnership, corporation, as-
22 sociation or other business entity, the following where
23 applicable: The names and addresses of every officer,
24 partner, resident agent, director or person performing a
25 function similar to a director, together with the names and
26 addresses of any person owning of record ten percent or more
27 of any class of voting stock of the applicant; and a list of
28 all names under which the applicant, officer, director, partner
29 or principal shareholder previously operated a surface-mining
30 operation in the United States within the five-year period
31 preceding the date of submission of the application;

32 (5) A statement of whether the applicant, or any
33 officer, partner, director, principal shareholder of the ap-
34 plicant, any subsidiary, affiliate or persons controlled by

35 or under common control with the applicant, has ever been
36 an officer, partner, director or principal shareholder in a
37 company which has ever held a federal or state mining permit
38 which in the five-year period prior to the date of submis-
39 sion of the application has been permanently suspended or
40 revoked or has had a mining bond or similar security deposited
41 in lieu of bond forfeited and, if so, a brief explanation of the
42 facts involved;

43 (6) A copy of the applicant's advertisement to be
44 published in a newspaper of general circulation in the
45 locality of the proposed permit area at least once a week
46 for four successive weeks. The advertisement shall contain
47 in abbreviated form the information required by this section
48 including the ownership and map of the tract location and
49 boundaries of the proposed site so that the proposed operation
50 is readily locatable by local residents, the location of the office
51 of the department of natural resources where the application
52 is available for public inspection and stating that written pro-
53 tests will be accepted by the director until a certain date which
54 shall be at least thirty days after the last publication of the
55 applicant's advertisement;

56 (7) A description of the type and method of surface-
57 mining operation that exists or is proposed, the engineering
58 techniques used or proposed, and the equipment used or
59 proposed to be used;

60 (8) The anticipated starting and termination dates of each
61 phase of the surface-mining operation and the number of
62 acres of land to be affected;

63 (9) A description of the legal documents upon which
64 the applicant bases his legal right to enter and conduct
65 surface-mining operations on the proposed permit area and
66 whether that right is the subject of pending court litigation:
67 *Provided*, That nothing in this article may be construed as
68 vesting in the director the jurisdiction to adjudicate property-
69 rights disputes;

70 (10) The name of the watershed and location of the
71 surface stream or tributary into which surface and pit drainage
72 will be discharged;

73 (11) A determination of the probable hydrologic con-
74 sequences of the mining and reclamation operations, both
75 on and off the mine site, with respect to the hydrologic
76 regime, quantity and quality of water in surface and ground
77 water systems, including the dissolved and suspended solids
78 under seasonal flow conditions and the collection of
79 sufficient data for the mine site and surrounding areas so
80 that an assessment can be made by the director of the prob-
81 able cumulative impacts of all anticipated mining in the
82 area upon the hydrology of the area, and particularly upon
83 water availability: *Provided*, That this determination shall not
84 be required until such time as hydrologic information on the
85 general area prior to mining is made available from an ap-
86 propriate federal or state agency or, if existing and in the
87 possession of the applicant, from the applicant: *Provided*,
88 *however*, That the permit application shall not be approved
89 until such information is available and is incorporated into
90 the application.

91 (12) Accurate maps to an appropriate scale clearly show-
92 ing: (A) The land to be affected as of the date of application;
93 (B) the area of land within the permit area upon which the
94 applicant has the legal right to enter and conduct surface-
95 mining operations; and (C) all types of information set forth
96 on enlarged topographical maps of the United States geological
97 survey of a scale of 1:24,000 or larger, including all man-
98 made features and significant known archaeological sites
99 existing on the date of application. In addition to other things
100 specified by the director, the map shall show the boundary
101 lines and names of present owners of record of all surface
102 areas abutting the proposed permit area and the location of
103 all structures within one thousand feet of the proposed permit
104 area;

105 (13) Cross-section maps or plans of the proposed affected
106 area, including the actual area to be mined, prepared by or
107 under the direction of and certified by a person approved by
108 the director, showing pertinent elevation and location of test
109 borings or core samplings, where required by the director, and
110 depicting the following information: (A) The nature and depth
111 of the various strata or overburden; (B) the location of sub-

112 surface water, if encountered, and its quality; (C) the nature
113 and thickness of any coal or rider seams above the seam to be
114 mined; (D) the nature of the stratum immediately beneath the
115 coal seam to be mined; (E) all mineral crop lines and the
116 strike and dip of the coal to be mined, within the area of land
117 to be affected; (F) existing or previous surface mining limits;
118 (G) the location and extent of known workings of any under-
119 ground mines, including mine openings to the surface; (H) the
120 location of any significant aquifers; (I) the estimated elevation
121 of the water table; (J) the location of spoil, waste or refuse
122 areas and topsoil preservation areas; (K) the location of all im-
123 poundments for waste or erosion control; (L) any settling or
124 water treatment facility or drainage system; (M) constructed
125 or natural drainways and the location of any discharges to
126 any surface body of water on the area of land to be affected
127 or adjacent thereto; and (N) adequate profiles at appropriate
128 cross sections of the anticipated final surface configuration
129 that will be achieved pursuant to the operator's proposed
130 reclamation plan;

131 (14) A statement of the result of test borings or core
132 samples from the permit area, including: (A) Logs of the
133 drill holes; (B) the thickness of the coal seam to be mined
134 and analysis of the chemical and physical properties of such
135 coal; (C) the sulfur content of any coal seam; (D) chemical
136 analysis of potentially acid or toxic forming sections of
137 the overburden; and (E) chemical analysis of the stratum
138 lying immediately underneath the coal to be mined: *Pro-*
139 *vided*, That the provisions of this subdivision may be waived
140 by the director with respect to the specific application by a
141 written determination that such requirements are unnecessary;

142 (15) For those lands in the permit application which a re-
143 connaissance inspection suggests may be prime farmlands, a
144 soil survey shall be made or obtained according to standards
145 established by the secretary of agriculture in order to confirm
146 the exact location of such prime farmlands;

147 (16) A reclamation plan as presented in section eleven of
148 this article;

149 (17) Information pertaining to coal seams, test borings,

150 core samplings or soil samples as required by this section
151 shall be made available to any person with an interest which
152 is or may be adversely affected: *Provided*, That information
153 which pertains only to the analysis of the chemical and phys-
154 sical properties of the coal, except information regarding such
155 mineral or elemental content which is potentially toxic to the
156 environment, shall be kept confidential and not made a matter
157 of public record;

158 (18) When requested by the director, the climatological
159 factors that are peculiar to the locality of the land to be
160 affected, including the average seasonal precipitation, the
161 average direction and velocity of prevailing winds, and the
162 seasonal temperature ranges; and

163 (19) Such other information that may be required by rules
164 and regulations reasonably necessary to effectuate the purposes
165 of this article.

166 (b) If the director finds that the probable total annual pro-
167 duction at all locations of any coal surface-mining operator
168 will not exceed one hundred thousand tons, the determination
169 of probable hydrologic consequences and the statement of the
170 result of test borings or core samplings shall, upon the written
171 request of the operator, be performed by a qualified public
172 or private laboratory designated by the director and a reason-
173 able cost of the preparation of such determination and state-
174 ment shall be assumed by the department from funds provided
175 by the United States department of the interior pursuant to
176 Public Law 95-87.

177 (c) Before the first publication of the applicant's adver-
178 tisement, each applicant for a surface-mining permit shall
179 file, except for that information pertaining to the coal seam
180 itself, a copy of the application for public inspection in the
181 nearest office of the department of natural resources as
182 specified in the applicant's advertisement.

183 (d) Each applicant for a permit shall be required to
184 submit to the director as a part of the permit application a
185 certificate issued by an insurance company authorized to do
186 business in this state covering the surface-mining operation
187 for which such permit is sought, or evidence that the

188 applicant has satisfied state self-insurance requirements. Such
189 policy shall provide for personal injury and property damage
190 protection in an amount adequate to compensate any persons
191 damaged as a result of surface coal mining and reclamation
192 operations, including use of explosives, and entitled to com-
193 pensation under the applicable provisions of state law. Such
194 policy shall be maintained in full force and effect during the
195 terms of the permit or any renewal, including the length of
196 all reclamation operations.

197 (e) Each applicant for a surface-mining permit shall sub-
198 mit to the director as part of the permit application a blasting
199 plan where explosives are to be used, which shall outline
200 the procedures and standards by which the operator will
201 meet the provisions of the blasting performance standards.

202 (f) The applicant shall file as a part of his permit appli-
203 cation a schedule listing all bond forfeitures, permit revoca-
204 tions, cessation orders or permanent suspension orders result-
205 ing from a violation of Public Law 95-87, this article or any
206 law or regulation of the United States or any department or
207 agency of any state pertaining to air or environmental pro-
208 tection received by the applicant in connection with any sur-
209 face mining operation during the three year period prior to
210 the date of application and indicating the final resolution of
211 any such forfeiture, revocation, cessation or permanent sus-
212 pension.

213 (g) Within five working days of receipt of an application
214 for a permit, the director shall notify the operator in writing,
215 stating whether the application is complete and whether the
216 operator's advertisement may be published. If the application
217 is not complete, the director shall state in writing why the
218 application is incomplete.

§20-6-11. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a surface-
2 mining permit application shall include, in the degree of detail
3 necessary to demonstrate that reclamation required by this
4 article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface min-

6 ing over the estimated life of these operations and the size,
7 sequence and timing of the operations for which it is antici-
8 pated that individual permits for mining will be sought;

9 (2) The condition of the land to be covered by the permit
10 prior to any mining, including: (A) The uses existing at the
11 time of the application and, if such land has a history of
12 previous mining, the uses which preceded any mining; (B) the
13 capability of the land prior to any mining to support a variety
14 of uses, giving consideration to soil and foundation character-
15 istics, topography and vegetation cover and, if applicable, a
16 soil survey prepared pursuant to subdivision (15), subsection
17 (a), section ten of this article; and (C) the best information
18 available on the productivity of the land prior to mining, in-
19 cluding appropriate classification as prime farm lands, and the
20 average yield of food, fiber, forage or wood products from
21 such lands obtained under high levels of management;

22 (3) The use which is proposed to be made of the land
23 following reclamation, including a discussion of the utility
24 and capacity of the reclaimed land to support a variety of
25 alternative uses and the relationship of such use to existing
26 land use policies and plans, and the comments of any owner
27 of the surface, other state agencies and local governments,
28 which would have to initiate, implement, approve or authorize
29 the proposed use of the land following reclamation;

30 (4) A detailed description of how the proposed post-
32 mining land use is to be achieved and the necessary
33 support activities which may be needed to achieve the proposed
34 land use;

35 (5) The engineering techniques proposed to be used in min-
36 ing and reclamation and a description of the major equipment;
37 a plan for the control of surface water drainage and of water ac-
38 cumulation; a plan where appropriate, for backfilling, soil sta-
39 bilization and compacting, grading, revegetation and a plan for
40 soil reconstruction, replacement and stabilization pursuant to the
41 performance standards in subdivision (7), subsection (b), section
42 thirteen of this article for those food, forage and forest lands
43 identified therein; and a statement as to how the operator plans

44 to comply with each of the applicable requirements set out in
45 section thirteen or fourteen of this article;

46 (6) A detailed estimated timetable for the accomplishment
47 of each major step in the reclamation plan;

48 (7) The consideration which has been given to conducting
49 surface-mining operations in a manner consistent with sur-
50 face owner plans and applicable state and local land use plans
51 and programs;

52 (8) The steps to be taken to comply with applicable air
53 and water quality laws and regulations and any applicable
54 health and safety standards;

55 (9) The consideration which has been given to developing
56 the reclamation plan in a manner consistent with local phy-
57 sical environmental and climatological conditions;

58 (10) All lands, interests in lands or options on such inter-
59 ests held by the applicant or pending bids on interests in
60 lands by the applicant, which lands are contiguous to the area
61 to be covered by the permit;

62 (11) A detailed description of the measures to be taken
63 during the surface-mining and reclamation process to assure
64 the protection of: (A) The quality of surface and ground water
65 systems, both on- and off-site, from adverse effects of the
66 surface-mining operation; (B) the rights of present users to
67 such water; and (C) the quantity of surface and ground water
68 systems, both on- and off-site, from adverse effects of the
69 surface-mining operation or to provide alternative sources of
70 water where such protection of quantity cannot be assured;

71 (12) The results of test borings which the applicant has
72 made at the area to be covered by the permit, or other equiva-
73 lent information and data in a form satisfactory to the director,
74 including the location of subsurface water, and an analysis of the
75 chemical properties, including acid forming properties of the
76 mineral and overburden: *Provided*, That information which
77 pertains only to the analysis of the chemical and physical prop-
78 erties of the coal, except information regarding such mineral
79 or elemental contents which are potentially toxic in the en-

80 vironment, shall be kept confidential and not made a matter
81 of public record;

82 (13) The consideration which has been given to maximize
83 the utilization and conservation of the solid fuel resource
84 being recovered so that reffecting the land in the future can
85 be minimized; and

86 (14) Such other requirements as the reclamation commis-
87 sion may prescribe by regulation.

88 (b) The reclamation plan shall be available to the public
89 for review except for those portions thereof specifically exempt-
90 ed in subsection (a) of this section.

**§20-6-12. Performance bonds; amount and method of bonding;
bonding requirements; special reclamation tax and
fund; prohibited acts; period of bond liability.**

1 (a) After a surface-mining permit application has
2 been approved pursuant to this article, but before such
3 a permit has been issued, each operator shall furnish bond,
4 on a form to be prescribed and furnished by the director, pay-
5 able to the state of West Virginia and conditioned upon the
6 operator faithfully performing all of the requirements of this
7 article and of the permit. The amount of the bond shall be
8 one thousand dollars for each acre or fraction thereof. The
9 bond shall cover (1) the entire permit area, or (2) that
10 increment of land within the permit area upon which the
11 operator will initiate and conduct surface-mining and rec-
12 lamation operations within the initial term of the permit.
13 If the operator chooses to use incremental bonding, as suc-
14 ceeding increments of surface mining and reclamation opera-
15 tions are to be initiated and conducted within the permit area,
16 the operator shall file with the director an additional bond or
17 bonds to cover such increments in accordance with this section:
18 *Provided*, That once the operator has chosen to proceed
19 with bonding either the entire permit area or with incremental
20 bonding, he shall continue bonding in that manner for the term
21 of the permit: *Provided, however*, That the minimum amount
22 of bond furnished shall be ten thousand dollars.

23 (b) The period of liability for performance bond coverage

24 shall commence with issuance of a permit and continue for the
25 full term of the permit plus any additional period necessary to
26 achieve compliance with the requirements in the reclamation
27 plan of the permit.

28 (c) (1) The form of the performance bond shall be ap-
29 proved by the director and may include, at the option of the
30 operator, surety bonding, collateral bonding (including cash
31 and securities), establishment of an escrow account, self-
32 bonding or a combination of these methods. If collateral
33 bonding is used, the operator may elect to deposit cash, or
34 collateral securities or certificates as follows: Bonds of the
35 United States or its possessions, of the federal land bank, or
36 of the home owners' loan corporation; full faith and credit
37 general obligation bonds of the state of West Virginia, or other
38 states, and of any county, district or municipality of the state
39 of West Virginia or other states; or certificates of deposit in
40 a bank in this state, which certificates shall be in favor of the
41 department. The cash deposit or market value of such securi-
42 ties or certificates shall be equal to or greater than the sum
43 of the bond. The director shall, upon receipt of any such
44 deposit of cash, securities or certificates, promptly place the
45 same with the treasurer of the state of West Virginia whose
46 duty it shall be to receive and hold the same in the name of the
47 state in trust for the purpose for which such deposit is made
48 when the permit is issued. The operator making the deposit
49 shall be entitled from time to time to receive from the state
50 treasurer, upon the written approval of the director, the whole
51 or any portion of any cash, securities or certificates so deposit-
52 ed, upon depositing with him in lieu thereof, cash or other
53 securities or certificates of the classes herein specified having
54 value equal to or greater than the sum of the bond.

55 (2) The reclamation commission may approve an alternative
56 bonding system if it will (A) reasonably assure that sufficient
57 funds will be available to complete the reclamation, restoration
58 and abatement provisions for all permit areas which may be in
59 default at any time, and (B) provide a substantial economic
60 incentive for the permittee to comply with all reclamation pro-
61 visions.

62 (d) The director may accept the bond of the applicant itself

63 without separate surety when the applicant demonstrates to
64 the satisfaction of the director the existence of a suitable
65 agent to receive service of process and a history of financial
66 solvency and continuous operation sufficient for authorization
67 to self-insure.

68 (e) It shall be unlawful for the owner of surface or mineral
69 rights to interfere with the present operator in the discharge of
70 his obligations to the state for the reclamation of lands
71 disturbed by him.

72 (f) The director may not release that portion of any bond
73 filed by any operator which is designated to assure faithful
74 performance of and compliance with the backfilling and
75 regarding requirements of the reclamation plan until all acid-
76 bearing or acid-producing spoil within the permit area has
77 been treated so that any untreated drainage or discharge
78 therefrom is not lower than the water quality of the receiving
79 stream.

80 (g) All bond releases shall be accomplished in accordance
81 with the provisions of section twenty-six of this article.

82 (h) All special reclamation taxes deposited by the director
83 with the treasurer or the state of West Virginia to the credit of
84 the special reclamation fund prior to the effective date of this
85 article shall be transferred to the special reclamation fund
86 created by this section and shall be expended pursuant to the
87 provisions of this subsection: *Provided*, That no moneys trans-
88 ferred into the special reclamation fund created by this section
89 shall be subject to refund. The fund shall be administered
90 by the director, and he is authorized to expend the monies
91 in the fund for the reclamation and rehabilitation of lands
92 which were subjected to permitted surface mining operations
93 and abandoned after the third day of August, one thousand
94 nine hundred seventy-seven, where the amount of the bond
95 posted and forfeited on such land is less than the actual cost
96 of reclamation. The director may also expend such amounts
97 as are reasonably necessary to implement and administer
98 the provisions of this chapter.

99 Whenever the special reclamation fund established by this
100 subsection sinks below one million dollars at the end of any

101 given quarterly period, every person then conducting coal
102 surface-mining operations shall contribute into said fund a
103 sum equal to one cent per ton of clean coal mined thereafter.
104 This fee shall be collected by the state tax commissioner in
105 the same manner as the West Virginia business and corpora-
106 tion tax in accordance with the provisions of chapter eleven
107 of this code and shall be deposited by him with the treasurer
108 of the state of West Virginia to the credit of the special
109 reclamation fund. At the beginning of each quarter, the
110 director shall advise the state tax commissioner and the gov-
111 ernor of the assets, excluding payments, expenditures and
112 liabilities, in the fund. If such assets are below one million
113 dollars, a notice of assessment shall be given to all operators
114 by the state tax commissioner and such one cent per ton
115 assessment shall be collected until the end of the quarter in
116 which the fund's assets, excluding payments, expenditures and
117 liabilities are in excess of two million dollars.

**§20-6-13. General environmental protection performance standards
for surface mining; variances.**

- 1 (a) Any permit issued by the director pursuant to this
2 article to conduct surface-mining operations shall re-
3 quire that such surface-mining operations will meet all
4 applicable performance standards of this article, and such
5 other requirements as the reclamation commission shall
6 promulgate.
- 7 (b) The following general performance standards shall
8 be applicable to all surface mines and shall require the
9 operation as a minimum to:
- 10 (1) Maximize the utilization and conservation of the
11 solid fuel resource being recovered to minimize reffect-
12 ing the land in the future through surface mining;
- 13 (2) Restore the land affected to a condition capable
14 of supporting the uses which it was capable of support-
15 ing prior to any mining, or higher or better uses of
16 which there is reasonable likelihood so long as such use
17 or uses do not present any actual or probable hazard
18 to public health or safety or pose any actual or prob-
19 able threat of water diminution or pollution, and the

20 permit applicants' declared proposed land use following
21 reclamation is not deemed to be impractical or unreas-
22 onable, inconsistent with applicable land use policies and
23 plans, involves unreasonable delay in implementation, or
24 is violative of federal, state or local law;

25 (3) Except as provided in subsection (c) of this section,
26 with respect to all surface mines, backfill, compact where ad-
27 visable to ensure stability or to prevent leaching of toxic ma-
28 terials, and grade in order to restore the approximate original
29 contour: *Provided*, That in surface mining which is carried
30 out at the same location over a substantial period of time
31 where the operation transects the coal deposit, and the
32 thickness of the coal deposits relative to the volume of the
33 overburden is large and where the operator demonstrates that
34 the overburden and other spoil and waste materials at a par-
35 ticular point in the permit area or otherwise available from the
36 entire permit area is insufficient, giving due consideration to
37 volumetric expansion, to restore the approximate original con-
38 tour, the operator, at a minimum shall backfill, grade and
39 compact, where advisable, using all available overburden and
40 other spoil and waste materials to attain the lowest practicable
41 grade but not more than the angle of repose, to provide ade-
42 quate drainage and to cover all acid-forming and other toxic
43 materials, in order to achieve an ecologically sound land use
44 compatible with the surrounding region: *Provided, however*,
45 That in surface mining where the volume of overburden is
46 large relative to the thickness of the coal deposit and where the
47 operator demonstrates that due to volumetric expansion the
48 amount of overburden and other spoil and waste materials re-
49 moved in the course of the mining operation is more than suffi-
50 cient to restore the approximate original contour, the operator
51 shall, after restoring the approximate contour, backfill, grade,
52 and compact, where advisable, the excess overburden and
53 other spoil and waste materials to attain the lowest grade but
54 not more than the angle of repose, and to cover all acid-form-
55 ing and other toxic materials, in order to achieve an ecological-
56 ly sound land use compatible with the surrounding region and,
57 such overburden or spoil shall be shaped and graded in such a
58 way as to prevent slides, erosion, and water pollution and is
59 revegetated in accordance with the requirements of this article:

60 *Provided further*, That the reclamation commission shall prom-
61 ulgate rules and regulations governing variances to the re-
62 quirements for return to approximate original contour or high-
63 wall elimination and where adequate material is not available
64 from surface-mining operations permitted after the effective
65 date of this article for (A) underground mining operations
66 existing prior to the third day of August, one thousand nine
67 hundred seventy-seven, or (B) for areas upon which surface-
68 mining prior to the first day of July, one thousand nine hun-
69 dred seventy-seven, created highwalls;

70 (4) Stabilize and protect all surface areas, including
71 spoil piles, affected by the surface-mining operation to
72 effectively control erosion and attendant air and water pollu-
73 tion;

74 (5) Remove the topsoil from the land in a separate
75 layer, replace it on the backfill area, or if not utilized
76 immediately, segregate it in a separate pile from other
77 spoil and when the topsoil is not replaced on a backfill
78 area within a time short enough to avoid deterioration of
79 the topsoil, maintain a successful vegetative cover by quick
80 growing plants or by other similar means in order to pro-
81 tect topsoil from wind and water erosion and keep it free
82 of any contamination by other acid or toxic material:
83 *Provided*, That if topsoil is of insufficient quantity or of
84 poor quality for sustaining vegetation, or if other strata can
85 be shown to be more suitable for vegetation requirements,
86 then the operator shall remove, segregate and preserve in a
87 like manner such other strata which is best able to support
88 vegetation;

89 (6) Restore the topsoil or the best available subsoil which
90 is best able to support vegetation;

91 (7) Ensure that all prime farmlands are mined and re-
92 claimed in accordance with the specifications for soil re-
93 moval, storage, replacement and reconstruction established
94 by the United States secretary of agriculture and the soil
95 conservation service pertaining thereto. The operator, as
96 a minimum, shall be required to: (A) Segregate the A
97 horizon of the natural soil, except where it can be shown

98 that other available soil materials will create a final soil
99 having a greater productive capacity, and if not utilized
100 immediately, stockpile this material separately from other
101 spoil, and provide needed protection from wind and
102 water erosion or contamination by other acid or toxic
103 material; (B) segregate the B horizon of the natural soil,
104 or underlying C horizons or other strata, or a combina-
105 tion of such horizons or other strata that are shown to be
106 both texturally and chemically suitable for plant growth
107 and that can be shown to be equally or more favorable
108 for plant growth than the B horizon, in sufficient quanti-
109 ties to create in the regraded final soil a root zone of
110 comparable depth and quality to that which existed in the
111 natural soil, and if not utilized immediately, stockpile this
112 material separately from other spoil and provide needed
113 protection from wind and water erosion or contamination by
114 other acid or toxic material; (C) replace and regrade the root
115 zone material described in subparagraph (B) above with
116 proper compaction and uniform depth over the regraded spoil
117 material; and (D) redistribute and grade in a uniform man-
118 ner the surface soil horizon described in subparagraph (A)
119 above;

120 (8) Create, if authorized in the approved surface-mining
121 and reclamation plan and permit, permanent impoundments of
122 water on mining sites as part of reclamation activities in
123 accordance with regulations promulgated by the reclamation
124 commission;

125 (9) Where augering is the method of recovery, seal all
126 auger holes with an impervious and noncombustible material
127 in order to prevent drainage except where the director
128 determines that the resulting impoundment of water in
129 such auger holes may create a hazard to the environment
130 or the public welfare and safety: *Provided*, That the
131 director may prohibit augering if necessary to maximize
132 the utilization, recoverability or conservation of the mineral
133 resources or to protect against adverse water quality im-
134 pacts;

135 (10) Minimize the disturbances to the prevailing hydro-
136 logic balance at the mine site and in associated off-site areas

137 and to the quality and quantity of water in surface and
138 ground water systems both during and after surface-mining
139 operations and during reclamation by: (A) Avoiding acid
140 to other toxic mine drainage; (B) conducting surface-mining
141 operations so as to prevent to the extent possible, using the
142 best technology currently available, additional contributions
143 of suspended solids to streamflow or runoff outside the per-
144 mit area, but in no event shall contributions be in excess of
145 requirements set by applicable state law; (C) constructing
146 an approved drainage system pursuant to subparagraph (B)
147 of this subdivision prior to commencement of surface-mining
148 operations, such system to be certified by a person approved
149 by the director to be constructed as designed and as approved
150 in the reclamation plan; (D) avoiding channel deepening or
151 enlargement in operations requiring the discharge of water
152 from mines; (E) unless otherwise authorized by the director,
153 cleaning out and removing temporary or large settling ponds
154 or other siltation structures after disturbed areas are re-
155 vegetated and stabilized, and depositing the silt and debris at
156 a site and in a manner approved by the director; (F) restoring
157 recharge capacity of the mined area to approximate premining
158 conditions; and (G) such other actions as the reclamation com-
159 mission may prescribe;

160 (11) With respect to surface disposal of mine wastes, tailings,
161 coal processing wastes and other wastes in areas other than the
162 mine working excavations, stabilize all wastepiles in designated
163 areas through construction in compacted layers, including the
164 use of noncombustible and impervious materials if necessary,
165 and assure the final contour of the waste pile will be compatible
166 with natural surroundings and that the site will be stabilized
167 and revegetated according to the provisions of this article;

168 (12) Design, locate, construct, operate, maintain, enlarge,
169 modify and remove or abandon, in accordance with the stan-
170 dards and criteria developed pursuant to subsection (f) of this
171 section, all existing and new coal mine waste piles consisting of
172 mine wastes, tailings, coal processing wastes or other liquid
173 and solid wastes, and used either temporarily or permanently
174 as dams or embankments;

175 (13) Refrain from surface mining within five hundred feet of

176 any active and abandoned underground mines in order to pre-
177 vent breakthroughs and to protect health or safety of miners:
178 *Provided*, That the director shall permit an operator to mine
179 near, through or partially through an abandoned underground
180 mine or closer to an active underground mine if: (A) The na-
181 ture, timing and sequencing of the approximate coincidence of
182 specific surface mine activities with specific underground mine
183 activities are coordinated jointly by the operators involved and
184 approved by the director of the department of mines, and (B)
185 such operations will result in improved resource recovery,
186 abatement of water pollution or elimination of hazards to the
187 health and safety of the public: *Provided*, That any break-
188 through which does occur shall be sealed;

189 (14) Ensure that all debris, acid-forming materials, toxic ma-
190 terials or materials constituting a fire hazard are treated or bur-
191 ied and compacted or otherwise disposed of in a manner design-
192 ed to prevent contamination of ground or surface water and that
193 contingency plans are developed to prevent sustained combus-
194 tion: *Provided*, That the operator shall remove or bury all met-
195 al, lumber, equipment and other debris resulting from the oper-
196 ation before grading release;

197 (15) Ensure that explosives are used only in accordance with
198 existing state and federal law and the regulations promulgated
199 by the reclamation commission, which shall include provisions
200 to: (A) Provide adequate advance written notice to local gov-
201 ernments and residents who might be affected by the use of such
202 explosives by publication of the planned blasting schedule in a
203 newspaper of general circulation in the locality and by mailing
204 a copy of the proposed blasting schedule to every resident living
205 within one-half mile of the proposed permit area excluding
206 drainage structures, haulroads and access roads unless there will
207 be blasting on or near such structures or roads: *Provided*, That
208 this notice shall suffice as daily notice to residents or occupants
209 of such areas; (B) maintain for a period of at least three years
210 and make available for public inspection, upon written request,
211 a log detailing the location of the blasts, the pattern and depth
212 of the drill holes, the amount of explosives used per hole and
213 the order and length of delay in the blasts; (C) limit the type of
214 explosives and detonating equipment, the size, the timing and

215 frequency of blasts based upon the physical conditions of the
216 site so as to prevent (i) injury to persons; (ii) damage to public
217 and private property outside the permit area; (iii) adverse im-
218 pacts on any underground mine; and (iv) change in the course,
219 channel or availability of ground or surface water outside the
220 permit area; (D) require that all blasting operations be conduct-
221 ed by persons certified by the director of the department of
222 mines; and (E) provide that upon written request of a resident
223 or owner of a man-made dwelling or structure within one-half
224 mile of any portion of the area identified in subparagraph (A)
225 of this subdivision, the applicant or permittee shall conduct a
226 preblasting survey or other appropriate investigation of such
227 structures and submit the results to the director and a copy to
228 the resident or owner making the request. The area of the sur-
229 vey shall be determined by the director in accordance with
230 regulations promulgated by the reclamation commission;

231 (16) Ensure that all reclamation efforts proceed in an envir-
232 onmentally sound manner and as contemporaneously as practi-
233 cable with the surface-mining operations. Time limits shall be
234 established by the reclamation commission requiring backfill-
235 ing, grading and planting to be kept current: *Provided*, That
236 where surface-mining operations and underground mining oper-
237 ations are proposed on the same area, which operations must
238 be conducted under separate permits, the director may grant a
239 variance from the requirement that reclamation efforts pro-
240 ceed as contemporaneously as practicable to permit under-
241 ground mining operations prior to reclamation:

242 (A) If the director finds in writing that:

243 (i) The applicant has presented, as part of the permit ap-
244 plication, specific, feasible plans for the proposed underground
245 mining operations;

246 (ii) The proposed underground mining operations are neces-
247 sary or desirable to assure maximum practical recovery of the
248 mineral resource and will avoid multiple disturbance of the
249 surface;

250 (iii) The applicant has satisfactorily demonstrated that the
251 plan for the underground mining operations conforms to re-
252 quirements for underground mining in the jurisdiction and that

253 permits necessary for the underground mining operations have
254 been issued by the appropriate authority;

255 (iv) The areas proposed for the variance have been shown
256 by the applicant to be necessary for the implementing of the
257 proposed underground mining operations;

258 (v) No substantial adverse environmental damage, either on-
259 site or off-site, will result from the delay in completion of
260 reclamation as required by this article;

261 (vi) Provisions for the off-site storage of spoil will comply
262 with subdivision (22), subsection (b), of this section;

263 (B) If the reclamation commission has promulgated
264 specific regulations to govern the granting of such vari-
265 ances in accordance with the provisions of this subpara-
266 graph and has imposed such additional requirements as he
267 deems necessary;

268 (C) If variances granted under the provisions of this sub-
269 section are to be reviewed by the director not more than three
270 years from the date of issuance of the permit; and

271 (D) If liability under the bond filed by the applicant with
272 the director pursuant to subsection (b), section twelve of this
273 article shall be for the duration of the underground mining
274 operations and until the requirements of subsection (g), sec-
275 tion twelve and section twenty-six of this article, have been
276 fully complied with;

277 (17) Ensure that the construction, maintenance and post-
278 mining conditions of access and haulroads into and across the
279 site of operations will control or prevent erosion and siltation,
280 pollution of water, damage to fish or wildlife or their habitat,
281 or public or private property: *Provided*, That access roads
282 constructed for and used to provide infrequent service to sur-
283 face facilities, such as ventilators or monitoring devices, shall
284 be exempt from specific construction criteria provided that
285 adequate stabilization to control erosion is achieved through
286 alternative measures;

287 (18) Refrain from the construction of roads or other ac-
288 cess ways up a stream bed or drainage channel or in such

289 proximity to such channel so as to significantly alter the nor-
290 mal flow of water;

291 (19) Establish on the regraded areas, and all other lands
292 affected, a diverse, effective and permanent vegetative cover
293 of the same seasonal variety native to the area of land to be
294 affected and capable of self-regeneration and plant succession
295 at least equal in extent of cover to the natural vegetation of
296 the area, except that introduced species may be used in the
297 revegetation process where desirable or when necessary to
298 achieve the approved postmining land use plan;

299 (20) Assume the responsibility for successful revegetation,
300 as required by subdivision (19) of this subsection, for a period
301 of not less than five growing seasons, as defined by the direc-
302 tor, after the last year of augmented seeding, fertilizing, irri-
303 gation or other work in order to assure compliance with
304 subdivision (19) of this subsection: *Provided*, That when the
305 director issues a written finding approving a long-term agri-
306 cultural postmining land use as a part of the mining and
307 reclamation plan, the director may grant exception to the
308 provisions of subdivision (19) of this subsection: *Provided*,
309 *however*, That when the director approves an agricultural
310 postmining land use, the applicable five growing seasons of
311 responsibility for revegetation shall commence at the date of
312 initial planting for such agricultural postmining land use;

313 (21) Protect off-site areas from slides or damage occurring
314 during surface-mining operations and not deposit spoil ma-
315 terial or locate any part of the operations or waste accumu-
316 lations outside the permit area: *Provided, however*, That spoil
317 material may be placed outside the permit area, if approved
318 by the director, after a finding that environmental benefits
319 will result from such;

320 (22) Place all excess spoil material resulting from surface
321 mining activities in such a manner that: (A) Spoil is transport-
322 ed and placed in a controlled manner in position for con-
323 current compaction and in such a way to assure mass sta-
324 bility and to prevent mass movement; (B) the areas of disposal
325 are within the bonded permit areas and all organic matter shall
326 be removed immediately prior to spoil placements; (C) appro-

327 priate surface and internal drainage system or diversion ditches
328 are used to prevent spoil erosion and movement; (D) the dis-
329 posal area does not contain springs, natural water courses or
330 wet weather seeps, unless lateral drains are constructed from
331 the wet areas to the main underdrains in a manner that filtra-
332 tion of the water into the spoil pile will be prevented; (E) if
333 placed on a slope, the spoil is placed upon the most moderate
334 slope among those upon which, in the judgment of the director,
335 the spoil could be placed in compliance with all the require-
336 ments of this article, and shall be placed, where possible, upon,
337 or above, a natural terrace, bench or berm, if such placement
338 provides additional stability and prevents mass movement;
339 (F) where the toe of the spoil rests on a downslope, a rock
340 toe buttress, of sufficient size to prevent mass movement, is
341 constructed; (G) the final configuration is compatible with
342 the natural drainage pattern and surroundings and suitable
343 for intended uses; (H) design of the spoil disposal area is
344 certified by a qualified registered professional engineer in con-
345 formance with professional standards; and (I) all other pro-
346 visions of this article are met: *Provided*, That where the excess
347 spoil material consists of at least eighty percent, by volume,
348 sandstone, limestone, or other rocks that do not slake in water,
349 the director may approve alternate methods for disposal of
350 excess spoil material, including fill placement by dumping in
351 a single lift, on a site specific basis: *Provided, however*, That
352 the services of a qualified registered professional engineer ex-
353 perience in the design and construction of earth and rockfill
354 embankment are utilized: *Provided further*, That such ap-
355 proval shall not be unreasonably withheld if the site is suitable;

356 (23) Meet such other criteria as are necessary to achieve
357 reclamation in accordance with the purposes of this article,
358 taking into consideration the physical, climatological and other
359 characteristics of the site;

360 (24) To the extent possible, using the best technology cur-
361 rently available, minimize disturbances and adverse impacts of
362 the operation on fish, wildlife and related environmental val-
363 ues, and achieve enhancement of such resources where prac-
364 ticable; and

365 (25) Retain a natural barrier to inhibit slides and erosion

366 on permit areas where outcrop barriers are required: *Provided*,
367 That constructed barriers may be allowed where (A) natural
368 barriers do not provide adequate stability, (B) natural barriers
369 would result in potential future water quality deterioration and
370 (C) natural barriers would conflict with the goal of maximum
371 utilization of the mineral resource: *Provided, however*, That
372 at a minimum, the constructed barrier must be of sufficient
373 width and height to provide adequate stability and the sta-
374 bility factor must equal or exceed that of the natural out-
375 crop barrier: *Provided further*, That where water quality is
376 paramount, the constructed barrier must be composed of im-
377 pervious material with controlled discharge points;

378 (c) (1) The reclamation commission may prescribe proce-
379 dures pursuant to which the director may permit surface-
380 mining operations for the purposes set forth in subdivision (3)
381 of this subsection.

382 (2) Where an applicant meets the requirements of sub-
383 divisions (3) and (4) of this subsection, a permit without re-
384 gard to the requirement to restore to approximate original con-
385 tour set forth in subsection (b) or (d) of this section may be
386 granted for the surface mining of coal where the mining oper-
387 ation will remove an entire coal seam or seams running
388 through the upper fraction of a mountain, ridge or hill, except
389 as provided in subparagraph (A), subdivision (4) of this sub-
390 section, by removing all of the overburden and creating a level
391 plateau or a gently rolling contour with no highwalls remain-
392 ing, and capable of supporting postmining uses in accordance
393 with the requirements of this subsection.

394 (3) In cases where an industrial, commercial, woodland,
395 agricultural, residential or public use is proposed for the post-
396 mining use of the affected land, the director may grant a per-
397 mit for a surface-mining operation of the nature described in
398 subdivision (2), of this subsection where: (A) The proposed
399 postmining land use is deemed to constitute an equal or better
400 use of the affected land, as compared with the premining use;
401 (B) the applicant presents specific plans for the proposed post-
402 mining land use and appropriate assurances that such use
403 will be: (i) Compatible with adjacent land uses; (ii) practi-
404 cable with respect to achieving the proposed use; (iii) support-

405 ed by commitments from public agencies where appropriate;
406 (iv) practicable with respect to private financial capability for
407 completion of the proposed use; (v) planned pursuant to a
408 schedule attached to the reclamation plan so as to integrate the
409 mining operation and reclamation with the postmining land
410 use; and (vi) designed by a person approved by the director
411 in conformance with standards established to assure the sta-
412 bility, drainage and configuration necessary for the intended
413 use of the site; (C) the proposed use would be compatible with
414 adjacent land uses, and existing state and local land use plans
415 and programs; (D) the director provides the county commis-
416 sion of the county in which the land is located and any state or
417 federal agency which the director, in his discretion, determines
418 to have an interest in the proposed use, an opportunity of not
419 more than sixty days to review and comment on the proposed
420 use; and (E) all other requirements of this article will be met.

421 (4) In granting any permit pursuant to this subsection, the
422 director shall require that: (A) A natural barrier be retained to
423 inhibit slides and erosion on permit areas where outcrop bar-
424 riers are required: *Provided*, That constructed barriers may
425 be allowed where (i) natural barriers do not provide adequate
426 stability, (ii) natural barriers would result in potential future
427 water quality deterioration and (iii) natural barriers would
428 conflict with the goal of maximum utilization of the mineral
429 resources: *Provided, however*, That at a minimum, the con-
430 structed barrier must be of sufficient width and height to pro-
431 vide adequate stability and the stability factor must equal or
432 exceed that of the natural outcrop barrier: *Provided further*,
433 That where water quality is paramount, the constructed bar-
434 rier must be composed of impervious material with controlled
435 discharge points; (B) the reclaimed area is stable; (C) the re-
436 sulting plateau or rolling contour drains inward from the out-
437 slopes except at specific points; (D) no damage will be done
438 to natural watercourses; (E) spoil will be placed on the moun-
439 taintop bench as is necessary to achieve the planned postmin-
440 ing land use: *Provided*, That all excess spoil material not re-
441 tained on the mountaintop shall be placed in accordance with
442 the provisions of subdivision (22), subsection (b) of this sec-
443 tion; and (F) ensure stability of the spoil retained on the
444 mountaintop and meet the other requirements of this article.

445 (5) All permits granted under the provisions of this sub-
446 section shall be reviewed not more than three years from the
447 date of issuance of the permit, unless the applicant affirmative-
448 ly demonstrates that the proposed development is proceeding
449 in accordance with the terms of the approved schedule and
450 reclamation plan.

451 (d) In addition to those general performance standards
452 required by this section, when surface mining occurs on slopes
453 of twenty degrees or greater, or on such lesser slopes as may
454 be defined by regulation after consideration of soil and cli-
455 mate, no debris, abandoned or disabled equipment, spoil mat-
456 erial or waste mineral matter will be placed on the natural
457 downslope below the initial bench or mining cut: *Provided,*
458 That soil or spoil material from the initial cut of earth in a
459 new surface mining operation may be placed on a limited speci-
460 fied area of the downslope below the initial cut if the per-
461 mittee can establish to the satisfaction of the director that
462 the soil or spoil will not slide and that the order requirements
463 of this section can still be met.

464 (e) The reclamation commission may promulgate regula-
465 tions pursuant to which the director may permit variances
466 from the requirements of this section: *Provided,* That the
467 watershed control of the area is improved: *Provided, however,*
468 That complete backfilling with spoil material shall be required
469 to completely cover the highwall, which material will maintain
470 stability following mining and reclamation.

471 (f) The reclamation commission shall promulgate regulations
472 for the design, location, construction, maintenance, operation,
473 enlargement, modification, removal and abandonment of new
474 and existing coal mine waste piles. In addition to engineering
475 and other technical specifications, the standards and criteria
476 developed pursuant to this subsection must include provisions
477 for review and approval of plans and specifications prior to
478 construction, enlargement, modification, removal or abandon-
479 ment; performance of periodic inspections during construction;
480 issuance of certificates of approval upon completion of con-
481 struction; performance of periodic safety inspections; and is-
482 suance of notices and orders for required remedial or main-
483 tenance work or affirmative action: *Provided,* That whenever

484 the director finds that any coal processing waste pile constitutes
485 an imminent danger to human life, he may, in addition to all
486 other remedies and without the necessity of obtaining the per-
487 mission of any person prior or present who operated or oper-
488 ates the pile or the landowners involved, enter upon the pre-
489 mises where any such coal processing waste piles exist and may
490 take or order to be taken such remedial action as may be nec-
491 essary or expedient to secure such coal processing waste pile
492 and to abate the conditions which cause the danger to human
493 life: *Provided, however,* That the cost reasonably incurred in
494 any remedial action taken by the director under this subsection
495 may be paid for initially by funds appropriated to the depart-
496 ment of natural resources for such purposes, and such sums so
497 expended shall be recovered from any responsible operator or
498 landowner, individually or jointly, by suit initiated by the at-
499 torney general at the request of the director. For purposes of
500 this subsection "operates" or "operated" means to enter upon
501 a coal processing waste pile, or part thereof, for the purpose of
502 disposing, depositing, dumping coal processing wastes thereon
503 or removing coal processing waste therefrom, or to employ
504 a coal processing waste pile for retarding the flow of or for
505 the impoundment of water.

**§20-6-14. General environmental protection performance standards
for the surface effects of underground mining; applica-
tion of other provisions of article to surface effects of
underground mining.**

1 (a) The reclamation commission shall promulgate separate
2 regulations directed toward the surface effects of under-
3 ground coal mining operations, embodying the requirements
4 in subsection (b) of this section: *Provided,* That in adopting
5 such regulations, the reclamation commission shall consider
6 the distinct difference between surface coal mines and under-
7 ground coal mines in West Virginia. Such regulations may
8 not conflict with or supersede any provision of the federal
9 or state coal mine health and safety laws or any regulation
10 issued pursuant thereto.

11 (b) Each permit issued by the director pursuant to this
12 article and relating to underground coal mining shall require
13 the operation as minimum to:

14 (1) Adopt measures consistent with known technology in
15 order to prevent subsidence and to the extent technologically
16 and economically feasible, maximize mine stability and main-
17 tain the value and reasonably foreseeable use of overlying
18 surface lands, except in those instances where the mining
19 technology used requires planned subsidence in a predictable
20 and controlled manner: *Provided*, That this subsection does
21 not prohibit the standard method of room and pillar mining;

22 (2) Seal all portals, entryways, drifts, shafts or other
23 openings that connect the earth's surface to the underground
24 mine workings when no longer needed for the conduct of the
25 mining operations in accordance with the requirements of all
26 applicable federal and state law and regulations promulgated
27 pursuant thereto;

28 (3) Fill or seal exploratory holes no longer necessary
29 for mining and maximize to the extent technologically and
30 economically feasible, if environmentally acceptable, return
31 of mine and processing waste, tailings and any other waste
32 incident to the mining operation to the mine workings or
33 excavations;

34 (4) With respect to surface disposal of mine wastes,
35 tailings, coal processing wastes and other wastes in areas
36 other than the mine workings or excavations, stabilize all
37 waste piles created by the operator from current operations
38 through construction in compacted layers, including the use
39 of incombustible and impervious materials, if necessary, and
40 assure that any leachate therefrom will not degrade surface
41 or ground waters below water quality standards established
42 pursuant to applicable federal and state law and that the
43 final contour of the waste accumulation will be compatible
44 with natural surroundings and that the site is stabilized and
45 revegetated according to the provisions of this section;

46 (5) Design, locate, construct, operate, maintain, enlarge,
47 modify and remove or abandon, in accordance with the
48 standards and criteria developed pursuant to subsection (f),
49 section thirteen of this article, all existing and new coal mine
50 waste piles consisting of mine wastes, tailings, coal processing

51 wastes and solid wastes and used either temporarily or perma-
52 nently as dams or embankments;

53 (6) Establish on regraded areas and all other disturbed
54 areas a diverse and permanent vegetative cover capable of
55 self-regeneration and plant succession and at least equal in
56 extent of cover to the natural vegetation of the area within
57 the time period prescribed in subdivision (20), subsection
58 (b), section thirteen of this article;

59 (7) Protect off-site areas from damages which may result
60 from such mining operations;

61 (8) Eliminate fire hazards and otherwise eliminate con-
62 ditions which constitute a hazard to health and safety of
63 the public;

64 (9) Minimize the disturbance of the prevailing hydrologic
65 balance at the mine site and in associated off-site areas
66 and to the quantity and the quality of water in surface and
67 ground water systems both during and after mining opera-
68 tions and during reclamation by: (A) Avoiding acid or
69 other toxic mine drainage by such measures as, but not
70 limited to: (i) Preventing or removing water from contact
71 with toxic producing deposits; (ii) treating drainage to re-
72 duce toxic content which adversely affects downstream water
73 before being released to water courses; and (iii) casing,
74 sealing or otherwise managing boreholes, shafts and wells
75 to keep acid or other toxic drainage from entering ground
76 and surface waters; and (B) conducting mining operations
77 so as to prevent, to the extent possible using the best tech-
78 nology currently available, additional contributions of sus-
79 pended solids to streamflow or runoff outside the permit area,
80 but in no event shall such contributions be in excess of re-
81 quirements set by applicable state law, and avoiding channel
82 deepening or enlargement in operations requiring the dis-
83 charge of water from mines: *Provided*, That in recognition
84 of the distinct differences between surface and underground
85 mining, the monitoring of water from underground coal mine
86 workings shall be in accordance with the provisions of the
87 Clean Water Act of 1977;

88 (10) With respect to other surface impacts of underground

89 mining not specified in this subsection, including the construc-
90 tion of new roads or the improvement or use of existing roads
91 to gain access to the site of such activities and for haulage, re-
92 pair areas, storage areas, processing areas, shipping areas,
93 and other areas upon which are sited structures, facilities or
94 other property or materials on the surface, resulting from or
95 incident to such activities, operate in accordance with the
96 standards established under section thirteen of this article
97 for such effects which result from surface-mining operations:
98 *Provided*, That the reclamation commission shall make such
99 modifications in the requirements imposed by this subdivision
100 as are necessary to accommodate the distinct difference
101 between surface and underground mining in West Virginia;

102 (11) To the extent possible, using the best technology
103 currently available, minimize disturbances and adverse im-
104 pacts of the operation on fish, aquatic life, wildlife and related
105 environmental values, and achieve enhancement of such re-
106 sources where practicable; and

107 (12) Unless otherwise permitted by the director after
108 consultation with the department of mines and in consideration
109 of the relevant safety and environmental factors, locate open-
110 ings for all new drift mines working in acid producing or iron
111 producing coal seams in such a manner as to prevent a gravity
112 discharge of water from the mine.

113 (c) In order to protect the stability of the land, the
114 director shall suspend underground mining under urbanized
115 areas, cities, towns and communities and adjacent to in-
116 dustrial or commercial buildings, major impoundments or
117 permanent streams if he finds imminent danger to inhabitants
118 of the urbanized areas, cities, towns or communities.

119 (d) The provisions of this article relating to permits,
120 bonds, insurance, inspections, reclamation and enforcement,
121 public review and administrative and judicial review shall
122 also be applicable to surface operations and surface impacts
123 incident to an underground mine with such modifications by
124 regulation to the permit application requirements, permit ap-
125 proval or denial procedures and bond requirements as are
126 necessary to accommodate the distinct difference between
127 surface mines and underground mines in West Virginia.

§20-6-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

1 (a) The director shall cause to be made such inspections
2 of surface-mining operations as are necessary to effectively
3 enforce the requirements of this article, and for such pur-
4 poses the director shall without advance notice and upon
5 presentation of appropriate credentials: (A) Have the right
6 of entry to, upon or through surface-mining operations or
7 any premises in which any records required to be maintained
8 under subdivision (1), subsection (b) of this section are
9 located; and (B) at reasonable times and without delay, have
10 access to and copy any records and inspect any monitoring
11 equipment or method of operation required under this article.

12 (b) For the purpose of enforcement under this article, in
13 the administration and enforcement of any permit under this
14 article, or for determining whether any person is in violation
15 of any requirement of this article:

16 (1) The director shall at a minimum require any operator
17 to: (A) Establish and maintain appropriate records; (B) make
18 monthly reports to the department; (C) install, use and main-
19 tain any necessary monitoring equipment or methods con-
20 sistent with subdivision (11), subsection (a), section ten of
21 this article; (D) evaluate results in accordance with such
22 methods, at such locations, intervals and in such manner
23 as the director shall prescribe; and (E) provide such other
24 information relative to surface-mining operations as the direc-
25 tor deems reasonable and necessary;

26 (2) For those surface-mining operations which remove or
27 disturb strata that serve as aquifers which significantly ensure
28 the hydrologic balance of water use either on or off the
29 mining site, the director shall require that: (A) Monitoring
30 sites be established to record the quantity and quality of sur-
31 face drainage above and below the mine site as well as in
32 the potential zone of influence; (B) monitoring sites be estab-
33 lished to record level, amount and samples of ground water
34 and aquifers potentially affected by the surface mining and
35 also below the lowermost mineral seam to be mined; (C)
36 records or well logs and borehole data be maintained; and (D)

37 monitoring sites be established to record precipitation. The
38 monitoring data collection and analysis required by this section
39 shall be conducted according to standards and procedures
40 set forth by the reclamation commission in order to assure
41 their reliability and validity.

42 (c) All surface mining operations shall be inspected at
43 least once every thirty days. Such inspections shall be made
44 on an irregular basis without prior notice to the operator
45 or his agents or employees, except for necessary on-site
46 meetings with the operator. The inspections shall include
47 the filing of inspection reports adequate to enforce the re-
48 quirements, terms and purposes of this article.

49 (d) Each permittee shall maintain at the entrances to the
50 surface-mining operations a clearly visible monument which
51 sets forth the name, business address and telephone number
52 of the permittee and the permit number of the surface-mining
53 operations.

54 (e) Copies of any records, reports, inspection materials or
55 information obtained under this article by the director shall
56 be made immediately available to the public at central and
57 sufficient locations in the county, multi-county or state area
58 of mining so that they are conveniently available to residents
59 in the areas of mining unless specifically exempted by this
60 article.

61 (f) Within thirty days after service of a copy of an order
62 of the director upon an operator by registered or certified
63 mail, the operator shall furnish to the director five copies of
64 a progress map prepared by or under the supervision of a
65 person approved by the director showing the disturbed area
66 to the date of such map. Such progress map shall contain
67 information identical to that required for both the proposed
68 and final maps required by this article, and shall show in
69 detail completed reclamation work as required by the director.
70 Such progress map shall include a geologic survey sketch
71 showing the location of the operation, shall be properly re-
72 ferenced to a permanent landmark, and shall be within
73 such reasonable degree of accuracy as may be prescribed
74 by the director. If no land has been disturbed by operations

75 during the preceding year, the operator shall notify the
76 director of that fact.

77 (g) Whenever on the basis of available information, in-
78 cluding reliable information from any person, the director
79 has cause to believe that any person is in violation of this
80 article, any permit condition or any regulation promulgated
81 under this article, the director shall immediately order state
82 inspection of the surface-mining operation at which the alleged
83 violation is occurring unless the information is available as
84 a result of a prior state inspection. The director shall notify
85 any person who supplied such reliable information when
86 the state inspection will be carried out. Such person may
87 accompany the inspector during the inspection: *Provided*,
88 That except for deliberate and willful acts, the permittee,
89 his authorized agent or employees, and the inspector whom
90 such person is accompanying, shall not be held civilly liable
91 for any injury to such person during the inspection trip.
92 Any such person accompanying an inspector on an inspection
93 shall be responsible for supplying any safety equipment re-
94 quired for his use.

**§20-6-16. Cessation of operation by order of inspector; informal
conference; imposition of affirmative obligations; ap-
peal.**

1 (a) Notwithstanding any other provisions of this article, a
2 surface-mining reclamation inspector shall have the authority
3 to issue a cessation order for any portion of a surface-mining
4 operation when an inspector determines that any condition
5 or practices exist, or that any permittee is in violation of
6 any requirements of this article or any permit condition
7 required by this article, which condition, practice, or violation
8 also creates an imminent danger to the health or safety of
9 the public, or is causing or can reasonably be expected to
10 cause significant, imminent environmental harm to land, air
11 or water resources. Such cessation order shall take effect
12 immediately. Unless waived in writing, an informal conference
13 shall be held at or near the site relevant to the violation set
14 forth in the cessation order within twenty-four hours after
15 such order becomes effective or such order shall expire.
16 Such conference shall be held before a surface-mining reclama-

17 tion supervisor who shall, immediately upon conclusion of
18 said hearing, determine when and if the operation or portion
19 thereof may resume. Any operator who believes he is ag-
20 grieved by the decision of the surface-mining reclamation
21 supervisor may immediately appeal to the director, setting
22 forth reasons why the operation should not be halted. The
23 director forthwith shall determine whether the operation or
24 portion thereof may be resumed.

25 (b) Such cessation order shall remain in effect until the
26 director determines that the condition, practice or violation
27 has been abated, or until modified, vacated or released by
28 the director. Where the director finds that the ordered cessa-
29 tion of any portion of a surface coal mining operation will
30 not completely abate the imminent danger to health or safety
31 of the public or the significant imminent environmental harm
32 to land, air or water resources, the director shall, in addition
33 to the cessation order, impose affirmative obligations on the
34 operator requiring him to take whatever steps the director
35 deems necessary to abate the imminent danger or the signifi-
36 cant environmental harm.

37 (c) Any cessation order issued pursuant to this section or
38 any other provision of this article may be released by any
39 inspector. An inspector shall be readily available to vacate
40 a cessation order upon abatement of the violation.

**§20-6-17. Notice of violation; procedure and actions; enforcement;
permit revocation and bond forfeiture; civil and criminal
penalties; prosecution; injunctive relief.**

1 (a) If any of the requirements of this article, rules and regula-
2 tions promulgated pursuant thereto or permit conditions have
3 not been complied with, the director may cause a notice of
4 violation to be served upon the operator or his duly authorized
5 agent. A copy of such notice shall be handed to the operator
6 or his duly authorized agent in person or served by certified
7 mail addressed to the operator at the permanent address
8 shown on the application for a permit. The notice shall specify
9 in what respects the operator has failed to comply with this
10 article, rules and regulations or permit conditions and shall
11 specify a reasonable time for abatement of the violation not to

12 exceed fifteen days. If the operator has not abated the viola-
13 tion within the time specified in the notice, or any reasonable
14 extension thereof, not to exceed seventy-five days, the director
15 shall order the cessation of the operation or the portion thereof
16 causing the violation, unless the operator affirmatively demon-
17 strates that compliance is unattainable due to conditions totally
18 beyond the control of the operator. If a violation is not abated
19 within the time specified or any extension thereof, or any
20 cessation order is issued, a mandatory civil penalty of not
21 less than one thousand dollars per day per violation shall be
22 assessed: *Provided*, That assessments of civil penalties under
23 this subsection shall continue until corrective steps have been
24 initiated by the operator to the satisfaction of the surface-
25 mining reclamation inspector: *Provided, however*, That if a
26 cessation order is released or expires within twenty-four hours
27 after issuance no mandatory civil penalty shall be assessed.

28 (b) If the director determines that a pattern of violations of
29 any requirement of this article or any permit condition exists
30 or has existed as a result of the operator's lack of reasonable
31 care and diligence, or that such violations are willfully caused
32 by the operator, the director shall immediately issue an order
33 directing the operator to show cause why the permit should not
34 be suspended or revoked and giving the operator thirty days in
35 which to request a public hearing. If a hearing is requested, the
36 director shall inform all interested parties of the time and place
37 of the hearing. Any hearing under this section shall be recorded
38 and subject to the provisions of chapter twenty-nine-a of this
39 code. Within sixty days following the public hearing, the direc-
40 tor shall issue and furnish to the permittee and all other parties
41 to the hearing a written decision, and the reasons therefor, con-
42 cerning suspension or revocation of the permit. Upon the
43 operator's failure to show cause why the permit should not
44 be suspended or revoked, the director shall immediately re-
45 voke the operator's permit, forfeit the operator's bond or
46 other security posted pursuant to section twelve of this article
47 and give notice to the attorney general, who shall collect the
48 forfeiture without delay: *Provided*, That the entire proceeds
49 of such forfeiture shall be deposited with the treasurer of the
50 state of West Virginia to the credit of the special reclamation
51 fund. All forfeitures collected prior to the effective date of

52 this article shall be deposited in the special reclamation fund
53 and shall be expended back upon the areas for which the
54 bond was posted: *Provided, however*, That any excess there-
55 from shall remain in the special reclamation fund.

56 (c) Any person engaged in surface-mining operations who
57 violates any permit condition or who violates any other pro-
58 vision of this article or rules and regulations promulgated pur-
59 suant thereto may also be assessed a civil penalty. Such penalty
60 shall not exceed five thousand dollars. Each day of continuing
61 violation may be deemed a separate violation for purposes
62 of penalty assessments. In determining the amount of the pen-
63 alty, consideration shall be given to the operator's history of
64 previous violations at the particular surface mining operation,
65 the seriousness of the violation, including any irreparable harm
66 to the environment and any hazard to the health or safety of
67 the public, whether the operator was negligent, and the demon-
68 strated good faith of the operator charged in attempting to
69 achieve rapid compliance after notifications of the violation.

70 (d) Notwithstanding the jurisdictional limitations contained
71 in article two, chapter fifty of this code, any such civil penalty
72 may be imposed and collected by the magistrate courts, which
73 shall have jurisdiction over all civil penalty actions brought by
74 the director. Civil penalties collected under this article shall be
75 deposited with the treasurer of the state of West Virginia to
76 the credit of the special reclamation fund established in section
77 twelve of this article.

78 (e) Any person who willfully and knowingly violates a
79 condition of a permit issued pursuant to this article or regula-
80 tions promulgated pursuant thereto, or fails or refuses to comply
81 with any order issued under said article and regulations or any
82 order incorporated in a final decision issued by the director
83 is guilty of a misdemeanor, and, upon conviction thereof,
84 shall be fined not less than one hundred dollars nor more than
85 ten thousand dollars, or imprisoned in the county jail not
86 more than one year, or both fined and imprisoned.

87 (f) Whenever a corporate operator violates a condition of
88 a permit issued pursuant to this article, regulations promulgated
89 pursuant thereto, or any order incorporated in a final decision

90 issued by the director, any director, officer or agent of such
91 corporation who willfully and knowingly, authorized, ordered
92 or carried out such failure or refusal shall be subject to the same
93 civil penalties, fines and imprisonment that may be imposed
94 upon a person under subsections (c) and (e) of this section.

95 (g) Any person who knowingly makes any false statement,
96 representation or certification, or knowingly fails to make any
97 statement, representation or certification in any application,
98 petition, record, report, plan or other document filed or re-
99 quired to be maintained pursuant to this article or regulations
100 promulgated pursuant thereto is guilty of a misdemeanor, and,
101 upon conviction thereof, shall be fined not less than one
102 hundred dollars nor more than ten thousand dollars, or im-
103 prisoned in the county jail not more than one year, or both
104 fined and imprisoned.

105 (h) Whenever a permittee or his agent: (A) Violates or
106 fails or refuses to comply with any order or decision issued
107 by the director under this article; or (B) interferes with, hinders,
108 or delays the director in carrying out the provisions of this
109 article; or (C) refuses to admit the director to the mine; or
110 (D) refuses to permit inspection of the mine by the director;
111 or (E) refuses to furnish any reasonable information or report
112 requested by the director in furtherance of the provisions of
113 this article; or (F) refuses to permit access to, and copying of,
114 such records as the director determines necessary in carrying
115 out the provisions of this article; or (G) violates any other
116 provisions of this article, the regulations promulgated pur-
117 suant thereto, or the terms and conditions of any permit, the
118 director, the attorney general, or the prosecuting attorney of
119 the county in which the major portion of the permit area is
120 located, may institute a civil action for relief, including a
121 permanent or temporary injunction, restraining order or any
122 other appropriate order, in the circuit court of Kanawha
123 County or any court of competent jurisdiction to compel com-
124 pliance with and enjoin such violations, failures or refusals.
125 The court or the judge thereof may issue a preliminary injunc-
126 tion in any case pending a decision on the merits of any appli-
127 cation filed without requiring the filing of a bond or other
128 equivalent security.

129 (i) Any person who shall, except as permitted by law, will-
130 fully resist, prevent, impede or interfere with the director
131 or any of his agents in the performance of duties pursuant to
132 this article is guilty of a misdemeanor, and, upon conviction
133 thereof, shall be punished by a fine of not more than five
134 thousand dollars or by imprisonment for not more than one
135 year, or both.

§20-6-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a surface mining application or
2 significant revision or renewal thereof, including public noti-
3 fication and an opportunity for a public hearing, the director
4 shall grant, require revision of, or deny the application for
5 a permit within sixty days and notify the applicant in writing
6 of his decision.

7 (b) No permit or significant revision of a permit may be
8 approved unless the applicant affirmatively demonstrates and
9 the director finds in writing on the basis of the information
10 set forth in the application or from information otherwise
11 available which shall be documented in the approval and made
12 available to the applicant that:

13 (1) The permit application is accurate and complete and
14 that all the requirements of this article and regulations there-
15 under have been complied with;

16 (2) The applicant has demonstrated that reclamation as
17 required by this article can be accomplished under the re-
18 clamation plan contained in the permit application;

19 (3) The assessment of the probable cumulative impact of
20 all anticipated mining in the area on the hydrologic balance,
21 as specified in section ten of this article, has been made by
22 the director and the proposed operation has been designed
23 to prevent material damage to the hydrologic balance outside
24 the permit area;

25 (4) The area proposed to be mined is not included within
26 an area designated unsuitable for surface mining pursuant to
27 section twenty-two of this article or is not within an area
28 under administrative study by the reclamation commission for
29 such designation; and

30 (5) In cases where the private mineral estate has been
31 severed from the private surface estate, the applicant has
32 submitted: (A) The written consent of the surface owner to
33 the extraction of coal by surface mining; or (B) a conveyance
34 that expressly grants or reserves the right to extract the coal
35 by surface mining; or (C) if the conveyance does not ex-
36 pressly grant the right to extract coal by surface mining, the
37 surface-subsurface legal relationship shall be determined in
38 accordance with applicable law: *Provided*, That nothing in
39 this article shall be construed to authorize the director to
40 adjudicate property rights disputes.

41 (c) Where information available to the department indi-
42 cates that any surface-mining operation located in the state
43 of West Virginia, owned or controlled by the applicant, is
44 currently in violation of this article or other West Virginia
45 environmental laws or regulations, the permit shall not be
46 issued until the applicant submits proof that such violation has
47 been corrected or is in the process of being corrected to the
48 satisfaction of the director or the department or agency which
49 has jurisdiction over such violation, and no permit may be
50 issued to any applicant after a finding by the director, after an
51 opportunity for hearing, that the applicant or the operator
52 specified in the application controls or has controlled mining
53 operations with a demonstrated pattern of willful violations of
54 this article of such nature and duration with such irreparable
55 damage to the environment as to indicate an intent not to
56 comply with the provisions of this article: *Provided*, That if the
57 director finds that the applicant is or has been affiliated with,
58 or managed or controlled by, or is or has been under the
59 common control of, other than as an employee, a person who
60 has had a surface mining permit revoked or bond or other
61 security forfeited for failure to reclaim lands as required by
62 the laws of this state, he shall not issue a permit to the
63 applicant: *Provided, however*, That subject to the discretion of
64 the director and based upon a petition for reinstatement,
65 permits may be issued to any such applicant if, after such
66 revocation or forfeiture, the operator whose permit has been
67 revoked or bond forfeited shall have paid into the special
68 reclamation fund any additional sum of money determined by
69 the director to be adequate to reclaim the disturbed area, and

70 the director is satisfied that such petitioner will comply with
71 this article.

72 (d) (1) In addition to finding the application in compliance
73 with subsection (b) of this section, if the area proposed to
74 be mined contains prime farmland, the director may, pursuant
75 to regulations promulgated hereunder, grant a permit to mine
76 on prime farmland if the operator affirmatively demonstrates
77 that he has the technological capability to restore such mined
78 area, within a reasonable time, to equivalent or higher levels
79 of yield as nonmined prime farmland in the surrounding
80 area under equivalent levels of management, and can meet
81 the soil reconstruction standards in subdivision (7), subsection
82 (b), section thirteen of this article. Except for compliance
83 with subsection (b) of this section, the requirements of
84 subdivision (1) of this subsection, shall apply to all permits
85 issued after the third day of August, one thousand nine
86 hundred seventy-seven.

87 (2) Nothing in this subsection shall apply to any permit
88 issued prior to the third day of August, one thousand nine
89 hundred seventy-seven, or to any revisions or renewals there-
90 of, or to any existing surface-mining operations for which a
91 permit was issued prior to said date.

92 (e) If the director finds that the overburden on any part
93 of the area of land described in the application for a permit
94 is such that experience in the state with a similar type of
95 operation upon land with similar overburden shows that
96 one or more of the following conditions cannot feasibly be
97 prevented: (1) Substantial deposition of sediment in stream
98 beds, (2) landslides, or (3) acid-water pollution, the director
99 may delete such part of the land described in the application
100 upon which such overburden exists.

**§20-6-19. Permit revision and renewal requirements; requirements
for transfer; assignment and sale of permit rights;
operator reassignment.**

1 (a) (1) Any valid permit issued pursuant to this article
2 shall carry with it the right of successive renewal upon
3 expiration with respect to areas within the boundaries of
4 the existing permit. The holders of the permit may apply

5 for renewal and such renewal shall be issued: *Provided*,
6 That on application for renewal, the burden shall be on the
7 opponents of renewal, unless it is established that and written
8 findings by the director are made that: (A) The terms and
9 conditions of the existing permit are not being satisfactorily
10 met: *Provided*, That if the permittee is required to modify
11 operations pursuant to mining or reclamation requirements
12 which become applicable after the original date of permit
13 issuance, the permittee shall be provided an opportunity to
14 submit a schedule allowing a reasonable period to comply
15 with such revised requirements; (B) the present surface-mining
16 operation is not in compliance with the applicable environ-
17 mental protection standards of this article; (C) the renewal
18 requested substantially jeopardizes the operator's continuing
19 responsibility on existing permit areas; (D) the operator has
20 not provided evidence that the performance bond in effect
21 for said operation will continue in effect for any renewal
22 requested as required pursuant to section twelve of this
23 article; or (E) any additional revised or updated infor-
24 mation as required pursuant to rules and regulations
25 promulgated by the reclamation commission has not been
26 provided.

27 (2) If an application for renewal of a valid permit in-
28 cludes a proposal to extend the surface-mining operation
29 beyond the boundaries authorized in the existing permit,
30 except incidental boundary revisions, the applicant shall apply
31 for a new permit. Incidental boundary revisions shall in-
32 clude, but not be limited to, additional areas of disturbance
33 ancillary to permitted surface effects of underground mining
34 operations, provided that the operator has submitted (A) ade-
35 quate bond, (B) a map showing the disturbed area and
36 facilities, and (C) a reclamation plan.

37 (3) Any permit renewal shall be for a term not to exceed
38 the period of time for which the original permit was issued.
39 Application for permit renewal shall be made at least one hun-
40 dred twenty days prior to the expiration of the valid permit.

41 (4) Any permit renewal application shall be on forms
42 prescribed by the director and shall contain such information
43 as the director requires pursuant to rule or regulation.

44 (b) (1) During the term of the permit, the permittee may
45 submit to the director an application for a revision of the
46 permit, together with a revised reclamation plan.

47 (2) An application for a significant revision of a permit
48 shall be subject to all requirements of this article and regula-
49 tions promulgated pursuant thereto.

50 (3) Any extension to an area already covered by the permit,
51 except incidental boundary revisions, shall be made by applica-
52 tion for another permit.

53 (c) The director shall review outstanding permits of a
54 five-year term before the end of the third year of the permit.
55 Other permits shall be reviewed once during their term. The
56 director may require reasonable revision or modification of
57 the permit following review: *Provided*, That such revision or
58 modification shall be based upon written findings and shall be
59 preceded by notice to the permittee and opportunity for
60 hearing.

61 (d) No transfer, assignment or sale of the rights granted
62 under any permit issued pursuant to this article shall be
63 made without the prior written approval of the director.

**§20-6-20. Public notice; written objections; public hearings; in-
formal conferences.**

1 (a) At the time of submission of an application for a
2 surface-mining permit or a significant revision of an existing
3 permit pursuant to the provisions of this article, the applicant
4 shall submit to the department a copy of the required ad-
5 vertisement. At the time of submission, the applicant shall
6 place the advertisement in a local newspaper of general circu-
7 lation in the county of the proposed surface-mining operation
8 at least once a week for four consecutive weeks. The director
9 shall notify various appropriate federal and state agencies
10 as well as local governmental bodies, planning agencies and
11 sewage and water treatment authorities or water companies
12 in the locality in which the proposed surface-mining operation
13 will take place, notifying them of the operator's intention to
14 mine on a particularly described tract of land and indicating
15 the application number and where a copy of the proposed

16 mining and reclamation plan may be inspected. These local
17 bodies, agencies, authorities or companies may submit written
18 comments within a reasonable period established by the
19 director on the mining application with respect to the effect
20 of the proposed operation on the environment which is
21 within their area of responsibility. Such comments shall be
22 immediately transmitted by the director to the applicant
23 and to the appropriate office of the department.

24 (b) Any person having an interest which is or may be
25 adversely affected, or the officer or head of any federal,
26 state or local governmental agency, shall have the right to
27 file written objections to the proposed initial or revised
28 permit application for a surface-mining operation with the
29 director within thirty days after the last publication of the
30 advertisement required in subsection (a) of this section.
31 Such objections shall be immediately transmitted to the
32 applicant by the director and shall be made available to the
33 public. If written objections are filed and an informal con-
34 ference requested within thirty days of the last publication
35 of the above notice, the director shall then hold a con-
36 ference in the locality of the proposed mining within three
37 weeks after the close of the public comment period. Those
38 requesting the conference shall be notified and the date,
39 time and location of the informal conference shall also
40 be advertised by the director in a newspaper of general
41 circulation in the locality at least two weeks prior to the
42 scheduled conference date. The director may arrange with
43 the applicant, upon request by any party to the conference
44 proceeding, access to the proposed mining area for the pur-
45 pose of gathering information relevant to the proceeding.
46 An electronic or stenographic record shall be made of the
47 conference proceeding unless waived by all parties. Such
48 record shall be maintained and shall be accessible to the parties
49 at their respective expense until final release of the applicant's
50 performance bond or other security posted in lieu thereof. The
51 director's authorized agent will preside over the conference.
52 In the event all parties requesting the informal conference
53 stipulate agreement prior to the conference and withdraw their
54 request, a conference need not be held.

§20-6-21. Decision of director on permit application; hearing thereon.

1 (a) If an informal conference has been held, the director
2 shall issue and furnish the applicant for a permit and persons
3 who were parties to the informal conference with the written
4 finding granting or denying the permit in whole or in part and
5 stating the reasons therefor within thirty days of the informal
6 conference, notwithstanding the requirements of subsection
7 (a), section eighteen of this article.

8 (b) If the application is approved, the permit shall be issued.
9 If the application is disapproved, specific reasons therefor
10 must be set forth in the notification. Within thirty days after
11 the applicant is notified of the director's decision, the appli-
12 cant or any person with an interest which is or may be adverse-
13 ly affected may request a hearing before the reclamation board
14 of review as provided in section twenty-four of this article to
15 review the director's decision.

§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

1 (a) The reclamation commission shall establish a planning
2 process to enable objective decisions based upon competent
3 and scientifically sound data and information as to which, if
4 any, land areas of this state are unsuitable for all or certain
5 types of surface-mining operations pursuant to the standards
6 set forth in subdivisions (1) and (2) of this subsection:
7 *Provided*, That such designation shall not prevent prospecting
8 pursuant to section eight of this article on any area so desig-
9 nated.

10 (1) Upon petition pursuant to subsection (b) of this sec-
11 tion, the reclamation commission shall designate an area as
12 unsuitable for all or certain types of surface-mining opera-
13 tions, if it determines that reclamation pursuant to the re-
14 quirements of this article is not technologically and economi-
15 cally feasible.

16 (2) Upon petition pursuant to subsection (b) of this sec-

17 tion, a surface area may be designated unsuitable for certain
18 types of surface-mining operations, if such operations: (A)
19 Be incompatible with existing state or local land use plans
20 or programs; (B) affect fragile or historic lands in which such
21 operations could result in significant damage to important his-
22 toric, cultural, scientific and aesthetic values and natural sy-
23 stems; (C) affect renewable resource lands including signifi-
24 cant aquifers and aquifer recharge areas, in which such oper-
25 ations could result in a substantial loss or reduction of long-
26 range productivity of water supply, food or fiber products; or
27 (D) affect natural hazard lands in which such operations could
28 substantially endanger life and property. Such lands to include
29 lands subject to frequent flooding and areas of unstable geo-
30 logy.

31 (3) The reclamation commission shall develop a process
32 which includes: (A) The review of surface-mining lands; (B)
33 a data base and an inventory system which will permit proper
34 evaluation of the capacity of different land areas of the state
35 to support and permit reclamation of surface-mining opera-
36 tions; (C) a method for implementing land use planning deci-
37 sions concerning surface-mining operations; and (D) proper
38 notice and opportunities for public participation, including a
39 public hearing prior to making any designation or redesign-
40 nation pursuant to this section.

41 (4) Determinations of the unsuitability of land for surface
42 mining, as provided for in this section, shall be integrated as
43 closely as possible with present and future land use planning
44 and regulation processes at federal, state and local levels.

45 (5) The requirements of this section shall not apply to
46 lands on which surface-mining operations were being con-
47 ducted on the third day of August, one thousand nine hundred
48 seventy-seven, or under a permit issued pursuant to this article,
49 or where substantial legal and financial commitments in such
50 operations were in existence prior to the fourth day of January,
51 one thousand nine hundred seventy-seven.

52 (b) The director, or any person having an interest which is
53 or may be adversely affected, shall have the right to
54 petition the reclamation commission to have an area

55 designated as unsuitable for surface-mining operations
56 or to have such a designation terminated. Such peti-
57 tion shall contain allegations of fact with supporting evi-
58 dence which would tend to establish the allegations. After
59 receipt of such petition, the reclamation commission shall im-
60 mediately begin an administrative study of the area specified
61 in the petition. Within ten months after receipt of the petition,
62 the reclamation commission shall hold a public hearing in the
63 locality of the affected area after appropriate notice and pub-
64 lication of the date, time and location of such hearing. After
65 the director or any person having an interest which is or may
66 be adversely affected has filed a petition and before the hearing
67 required by this subsection, any person may intervene by filing
68 allegations of fact with supporting evidence which would tend
69 to establish the allegations. Within sixty days after such hear-
70 ing, the reclamation commission shall issue and furnish to the
71 petitioner and any other party to the hearing, a written decision
72 regarding the petition and the reasons therefor. In the event
73 that all the petitioners stipulate agreement prior to the re-
74 quested hearing and withdraw their request, such hearing need
75 not be held.

76 (c) Prior to designating any land areas as unsuitable for
77 surface-mining operations, the reclamation commission shall
78 prepare a detailed statement on: (1) The potential coal re-
79 sources of the area; (2) the demand for the coal resources; and
80 (3) the impact of such designation on the environment, the
81 economy and the supply of coal.

82 (d) After the third day of August, one thousand nine hun-
83 dred seventy-seven, and subject to valid existing rights, no
84 surface-mining operations, except those which existed on that
85 date, shall be permitted:

86 (1) On any lands in this state within the boundaries of
87 units of the national park system, the national wildlife refuge
88 systems, the national system of trails, the national wilderness
89 preservation system, the wild and scenic rivers system, includ-
90 ing study rivers designated under section five-a of the Wild
91 and Scenic Rivers Act, and national recreation areas desig-
92 nated by act of Congress: *Provided*, That the director may
93 grant variances to this subdivision after an affirmative

94 finding that positive environmental benefits will result from
95 such;

96 (2) Which will adversely affect any publicly owned part or
97 places included in the national register of historic sites, or na-
98 tional register of natural landmarks unless approved jointly by
99 the director and the federal, state or local agency with jurisdic-
100 tion over the park, the historic site, or natural landmark;

101 (3) Within one hundred feet of the outside right-of-way line
102 on any public road, except where mine access road or haulage
103 roads join such right-of-way line, and except that the director
104 may permit such roads to be relocated or the area affected to
105 lie within one hundred feet of such road if, after public notice
106 and an opportunity for a public hearing in the locality, the
107 director makes a written finding that the interests of the public
108 and the landowners affected thereby will be protected;

109 (4) Within three hundred feet from any occupied dwelling,
110 unless waived by the owner thereof, or within three hundred
111 feet of any public building, school, church, community or in-
112 stitutional building, public park, or within one hundred feet of
113 a cemetery; or

114 (5) On any federal lands within the boundaries of any
115 national forest: *Provided*, That surface coal mining operations
116 may be permitted on such lands if the secretary of the interior
117 finds that there are no significant recreational, timber, eco-
118 nomic or other values which may be incompatible with such
119 surface-mining operations: *Provided further*, That such surface
120 operations and impacts are incident to an underground coal
121 mine.

122 (e) Notwithstanding any other provision of this code, the
123 coal underlying any lands designated unsuitable for surface-
124 mining operations under any provisions of this article or under-
125 lying any land upon which mining is prohibited by any provi-
126 sions of this article shall be assessed for taxation purposes ac-
127 cording to their value, and the Legislature hereby finds that
128 such coal has no value for the duration of such designation or
129 prohibition unless suitable for underground mining not in vio-
130 lation of this article: *Provided*, That the owner of such coal
131 shall forthwith notify the proper assessing authorities if such

132 designation or prohibition is removed so that such coal may
133 be reassessed.

§20-6-23. Appointment and organization of reclamation board of review; authority, compensation, etc.

1 (a) There is hereby created a reclamation board of review
2 consisting of five members to be appointed by the governor
3 with the advice and consent of the Senate for terms of
4 five years, except that the terms of the first five members
5 of said board shall be for one, two, three, four and
6 five years respectively, as designated by the governor at
7 the time of the appointment. Any vacancy in the office
8 of a member of said board shall be filled by appoint-
9 ment by the governor for the unexpired term of the
10 member whose office is vacant. Each vacancy occurring on
11 said board shall be filled by appointment within sixty days
12 after such vacancy occurs. One of the appointees to such
13 board shall be a person who, by reason of his previous
14 vocation, employment or affiliations, can be classed as one
15 capable and experienced in coal mining. One of the appointees
16 to such board shall be a person who, by reason of his previous
17 training and experience, can be classed as one capable and
18 experienced in the practice of agriculture and who represents
19 the general public interest. One of the appointees to such
20 board shall be a person who, by reason of his previous train-
21 ing and experience, can be classed as one capable and ex-
22 perienced in the modern forestry practices and who represents
23 the general public interest. One of the appointees to such board
24 shall be a person who, by reason of his previous training
25 and experience, can be classed as one capable and ex-
26 perienced in engineering. One of the appointees of such
27 board shall be a person who, by reason of his previous
28 training and experience, can be classed as one capable and
29 experienced in water pollution control or water conservation
30 problems. Not more than three members shall be members of
31 the same political party.

32 (b) The board may employ supporting staff including
33 hearings examiners to aid and assist in performing its respon-
34 sibilities under this article.

35 (c) Three members shall constitute a quorum and no
36 action of the board is valid unless it has the concurrence
37 of at least three members. The board shall keep a record of
38 its proceedings. Each member shall be paid as compensation
39 for his work as such member, from funds appropriated for
40 such purposes, seventy-five dollars per day when actually
41 engaged in the performance of his work as a board member.
42 In addition to such compensation, each member shall be
43 reimbursed for all reasonable and necessary expenses actual-
44 ly incurred in the performance of his duties, except that in
45 the event the expenses are paid, or are to be paid, by a third
46 party, the members shall not be reimbursed by the state.

47 (d) Annually, one member shall be elected as chairman
48 and another member shall be elected as vice chairman. Such
49 officers shall serve for terms of one year. The governor
50 may remove any member of the board from office for
51 inefficiency, neglect of duty, malfeasance or nonfeasance,
52 after delivery to such member the charges against him in
53 writing, together with at least ten days' written notice of
54 the time and place at which the governor will publicly hear
55 such member, either in person or by counsel, in defense of
56 the charges against him, and affording the member such
57 hearing. If such member is removed from office, the
58 governor shall file in the office of the secretary of state
59 a complete statement of the charges made against such member
60 and a complete report of the proceedings thereon. In such
61 case the action of the governor removing such member from
62 office shall be final.

**§20-6-24. Appeals to board; hearings before board; subpoena and
subpoena duces tecum; records; findings and orders
of board.**

1 (a) Any person having an interest which is or may be
2 adversely affected by any order of the reclamation com-
3 mission or any notice, order or final determination by the
4 director may appeal to the board for an order terminating,
5 vacating or modifying such notice, order or determination, or
6 may intervene in a timely manner in any such pending appeal.
7 The person so appealing to the board shall be known as
8 the appellant, and the commission or director shall be known

9 as appellees. The appellant and appellee are deemed to be
10 parties to the appeal. Any hearing shall be subject to the
11 requirements of chapter twenty-nine-a of this code.

12 (b) Such appeal shall be in writing and shall set forth
13 the action complained of and the specific grounds upon which
14 the appeal is based. Within thirty days after the appellant
15 is notified of the notice, order or final determination of
16 the director or the reclamation commission, the appellant or
17 any person with an interest which is or may be adversely
18 affected may request a hearing on the reasons for the final
19 determination, notice or order complained of. A notice of
20 the filing of such appeal shall be filed with the reclamation
21 commission or the director within three days after the ap-
22 peal is filed with the board.

23 (c) Upon the filing of such appeal, the board shall fix
24 the time and place at which the hearing on the appeal will
25 be held, which hearing shall be held within thirty days after
26 the notice of appeal is filed, and shall give the appellant,
27 the commission or the director at least twenty days' written
28 notice thereof by certified mail. The board may postpone or
29 continue any hearing upon its own motion or motion of the
30 parties to the appeal.

31 (d) Not later than five days prior to the time fixed for
32 the hearing on the appeal, the reclamation commission or
33 director shall prepare and certify to the board a complete
34 record of the proceedings of the reclamation commission or
35 director out of which the appeal arises, including all docu-
36 ments and correspondence related to the matter.

37 (e) The filing of an appeal provided for in this section
38 shall not stay execution of the order appealed from. Pend-
39 ing completion of the investigation and hearing required by
40 this section, the applicant may file with the director a writ-
41 ten request that the director grant temporary relief from
42 any notice or order issued under section sixteen or seventeen
43 of this article, together with a detailed statement giving
44 reasons for granting such relief. The director shall issue
45 an order or decision granting or denying such relief ex-
46 peditiously: *Provided*, That where the applicant requests

47 relief from an order for cessation of surface mining and
48 reclamation operations, the decision on such a request shall
49 be issued within forty-eight hours of its receipt. The director
50 may grant such relief, under such conditions as he may
51 prescribe, if:

52 (1) All parties to the proceedings have been notified
53 and given an opportunity to be heard on a request for tem-
54 porary relief;

55 (2) The person requesting such relief shows that there
56 is a substantial likelihood that he will prevail on the merits
57 of the final determination of the proceedings;

58 (3) Such relief will not adversely affect the public health
59 or safety or cause significant imminent environmental harm
60 to land, air or water resources; and

61 (4) The relief sought is not the issuance of a permit
62 where a permit has been denied, in whole or in part, by the
63 director.

64 (f) The board shall hear the appeal de novo and any
65 party to the appeal may submit evidence. For the purpose of
66 conducting a hearing on an appeal, the board may require the
67 attendance of witnesses and the production of books, records
68 and papers, and it may, and at the request of any party it
69 shall, issue subpoenas for witnesses or subpoenas duces
70 tecum to compel the production of any books, records or
71 papers, directed to the sheriff of the county where such
72 witnesses, books, records or papers are found, which sub-
73 poenas and subpoenas duces tecum shall be served and re-
74 turned in the same manner as subpoenas and subpoenas duces
75 tecum in civil litigation are served and returned. The fees
76 and allowances for mileage of sheriffs and witnesses shall
77 be the same as those permitted in civil litigation in trial
78 courts. All fees and mileage expenses incurred and the
79 expense of preparing the record at the request of the appellant
80 shall be paid by the appellant.

81 (g) In case of disobedience or neglect of any subpoena
82 or subpoena duces tecum served on any person, or the refusal
83 of any witness to testify to any matter regarding which he

84 may be lawfully interrogated, the circuit court of the county
85 in which such disobedience, neglect or refusal occurs, on
86 application of the board or any member thereof, shall com-
87 pel obedience by attachment proceedings for contempt as
88 in the case of disobedience of the requirements of a sub-
89 poena or subpoena duces tecum issued from such court of
90 a refusal to testify therein. Witnesses at such hearings
91 shall testify under oath and any member of the board may
92 administer oaths or affirmations to persons who so testify.

93 (h) A stenographic record of the testimony and other
94 evidence submitted shall be made. Such record shall include
95 all of the testimony and other evidence and the rulings on
96 the admissibility of evidence, but any party may at the time
97 object to the admission of any evidence and except to the
98 rulings of the board thereon, and if the board refuses to admit
99 evidence the party offering the same may make a proffer
100 thereof, and such proffer shall be made a part of the record
101 of such hearing.

102 (i) If upon completion of the hearing the board finds
103 that the notice, order or final determination appealed from
104 was lawful and reasonable, it shall make a written order
105 affirming the same, or if the board finds that said notice,
106 order or final determination was not supported by substantial
107 evidence in the record considered as a whole, it shall make
108 a written order terminating, vacating or modifying the notice
109 or order appealed from. Every order made by the board shall
110 contain a written finding by the board of the facts upon which
111 the order is based. Notice of the making of such order shall be
112 given forthwith to each party to the appeal by mailing a
113 certified copy thereof to each such party by registered or
114 certified mail. The order of the board shall be final unless
115 vacated upon judicial review thereof.

§20-6-25. Appeal from order of board; judicial review; temporary relief.

1 (a) Within thirty days after receipt of an order from the
2 board, any applicant, any person with an interest which is
3 or may be adversely affected, or the appellee who has par-
4 ticipated in the administrative proceedings before the board

5 and who is aggrieved by the decision of the board may
6 obtain judicial review thereof by appealing to the circuit
7 court of Kanawha County or of the county in which the sur-
8 face-mining operations is located. Any party desiring to
9 so appeal shall file with the board a notice of appeal,
10 designating the order appealed from, stating whether the
11 appeal is taken on questions of law, questions of fact or
12 questions of law and fact, and stating specific grounds upon
13 which the appeal is based. A copy of such notice shall also
14 be filed by the appellant with the court and shall be mailed
15 or otherwise delivered to the appellee. Such notice and
16 copies thereof shall be filed and mailed or otherwise de-
17 livered within thirty days after the date upon which the
18 appellant received notice from the board by certified mail
19 of the making of the order appealed from. No appeal bond
20 may be required to make effective an appeal on questions of
21 law, questions of fact or questions of law and fact.

22 (b) The filing of a notice of appeal shall not, unless
23 specifically ordered by the court, operate as a stay of the
24 order of the board. The court may, under such conditions
25 as it may prescribe, grant such temporary relief as it deems
26 appropriate pending final determination of the proceedings
27 if:

28 (1) All parties to the proceedings have been notified and
29 given an opportunity to be heard on a request for temporary
30 relief;

31 (2) The person requesting such relief shows that there
32 is a substantial likelihood that he will prevail on the merits
33 of the final determination of the proceedings; and

34 (3) Such relief will not adversely affect the public health
35 or safety or cause significant imminent environmental harm
36 to land, air or water resources.

37 (c) Within thirty days after receipt of the notice of
38 appeal, the board shall prepare and file in the court the
39 complete record of the proceedings out of which the appeal
40 arises, including a transcript of the testimony and other
41 evidence which was submitted before the board. The expense
42 of preparing and transcribing such record shall be taxed as
43 a part of the costs of the appeal. The appellant shall pro-

44 wide security for costs satisfactory to the court. Upon demand
45 by a party, the board shall furnish, at the cost of the party
46 requesting the same, a copy of such record. In the event
47 such complete record is not filed in the court within the time
48 provided for in this section, either party may apply to the
49 court to have the case docketed, and the court shall order
50 such record filed.

51 (d) Appeals taken on questions of law, fact or both,
52 shall be heard upon assignment of error filed in the case or
53 set out in the briefs of the appellant. Errors not argued by
54 brief may be disregarded. The court shall hear such appeal
55 solely upon the record made before the board.

56 (e) The court may affirm, vacate, modify, set aside or
57 remand any order of the board for such further action as the
58 court may direct. Any order shall be affirmed if the court
59 concludes that such order is supported by substantial evi-
60 dence based on the record as a whole. The judgment of the
61 court shall be final unless reversed, vacated or modified
62 on appeal to the supreme court of appeals of West Virginia,
63 and jurisdiction is hereby conferred upon such court to hear
64 and entertain such appeals upon application made therefor
65 in the manner and within the time provided for civil appeals
66 generally.

67 (f) The availability of such review shall not be construed
68 to limit the operation of the rights established in section
69 twenty-eight of this article except as provided therein.

70 (g) Whenever an order is issued under this section, or
71 as a result of any administrative or judicial proceeding under
72 this article, at the request of any person, a sum equal to the
73 aggregate amount of all costs and expenses, including at-
74 torney fees, as determined by the board or the court to have
75 been reasonably incurred by such person for or in connection
76 with his participation in such proceedings, may be assessed
77 against either party by the board or the court.

**§20-6-26. Release of performance bond or deposits; application;
notice; duties of director; public hearings; final maps
on grade release.**

1 (a) The permittee may file a request with the director for

2 the release of a performance bond or deposit. The permittee
3 shall publish an advertisement regarding such request for re-
4 lease in the same manner as is required of advertisements for
5 permit applications. A copy of such advertisement shall be sub-
6 mitted to the director as part of any bond release application
7 and shall contain a notification of the precise location of the
8 land affected, the number of acres, the permit and the date ap-
9 proved, the amount of the bond filed and the portion sought to
10 be released, the type and appropriate dates of reclamation work
11 performed and a description of the results achieved as they
12 relate to the permittee's approved reclamation plan. In addi-
13 tion, as part of any bond release application, the permittee
14 shall submit copies of letters which he has sent to adjoining
15 property owners, local government bodies, planning agencies,
16 sewage and water treatment authorities or water companies in
17 the locality in which the surface-mining operation is located,
18 notifying them of the permittee's intention to seek release from
19 the bond. Any request for grade release shall also be accom-
20 panied by final maps.

21 (b) Upon receipt of the application for bond release, the
22 director, within thirty days taking into consideration existing
23 weather conditions, shall conduct an inspection and evaluation
24 of the reclamation work involved. Such evaluation shall con-
25 sider, among other things, the degree of difficulty to com-
26 plete any remaining reclamation, whether pollution of surface
27 and subsurface water is occurring, the probability of contin-
28 uance or future occurrence of such pollution and the estimated
29 cost of abating such pollution. The director shall notify the
30 permittee in writing of his decision to release or not to re-
31 lease all or part of the performance bond or deposit within
32 sixty days from the date of the initial publication of the adver-
33 tisement if no public hearing is requested. If a public hearing
34 is held, the director's decision shall be issued within thirty
35 days thereafter.

36 (c) If the director is satisfied that reclamation covered by
37 the bond or deposit or portion thereof has been accomplished
38 as required by this article, he may release said bond or de-
39 posit, in whole or in part, according to the following schedule:

40 (1) When the operator completes the backfilling, regrading
41 and drainage control of a bonded area in accordance with his
42 approved reclamation plan, the release of sixty percent of the
43 bond or collateral for the applicable bonded area: *Provided*,
44 That a minimum bond of ten thousand dollars shall be retain-
45 ed after grade release;

46 (2) Two years after the last augmented seeding, fer-
47 tilizing, irrigation or other work to ensure compliance with
48 subdivision (19), subsection (b), section thirteen of this article,
49 the release of an additional twenty-five percent of the bond or
50 collateral for the applicable bonded area: *Provided*, That a
51 minimum bond of ten thousand dollars shall be retained after
52 the release provided for in this subdivision; and

53 (3) When the operator has completed successfully all sur-
54 face mining and reclamation activities, the release of the re-
55 maining portion of the bond, but not before the expiration of
56 the period specified in subdivision (20), subsection (b), sec-
57 tion thirteen of this article: *Provided*, That the revegetation
58 has been established on the regraded mined lands in accordance
59 with the approved reclamation plan. No part of the bond or
60 deposit may be released under this subsection so long as the
61 lands to which the release would be applicable are contribut-
62 ing additional suspended solids to streamflow or runoff out-
63 side the permit area in excess of the requirements set by sec-
64 tions thirteen or fourteen of this article, or until soil produc-
65 tivity for prime farmlands has returned to equivalent levels of
66 yield as nonmined land of the same soil type in the surround-
67 ing area under equivalent management practices as determined
68 from the soil survey performed pursuant to section ten of this
69 article. Where a sediment dam is to be retained as a perman-
70 ent impoundment pursuant to section thirteen of this article,
71 or where a road or where a minor deviation is to be retained
72 for sound future maintenance of the operation, the portion of
73 the bond may be released under this subsection so long as
74 provisions for sound future maintenance by the operator or the
75 landowner have been made with the director.

76 (d) If the director disapproves the application for release
77 of the bond or portion thereof, the director shall notify the
78 permittee, in writing, stating the reasons for disapproval and

79 recommending corrective actions necessary to secure said re-
80 lease and notifying the operator of his right to a hearing.

81 (e) When any application for total or partial bond release
82 is filed with the director, he shall notify the municipality in
83 which a surface-mining operation is located by registered or
84 certified mail at least thirty days prior to the release of all or
85 a portion of the bond.

86 (f) Any person with a valid legal interest which is or may
87 be adversely affected by release of the bond or the responsible
88 officer or head of any federal, state or local governmental
89 agency which has jurisdiction by law or special expertise
90 with respect to any environmental, social or economic im-
91 pact involved in the operation, or is authorized to develop
92 and enforce environmental standards with respect to such oper-
93 ations, has the right to file written objections to the proposed
94 bond release and request a hearing with the director within
95 thirty days after the last publication of the permittee's adver-
96 tisement. If written objections are filed and a hearing requested,
97 the director shall inform all of the interested parties of the
98 time and place of the hearing and shall hold a public hearing in
99 the locality of the surface-mining operation proposed for bond
100 release within three weeks after the close of the public com-
101 ment period. The date, time and location of such public hear-
102 ing shall also be advertised by the director in a newspaper of
103 general circulation in the same locality.

104 (g) Without prejudice to the rights of the objectors, the
105 applicant, or the responsibilities of the director pursuant to this
106 section, the director may hold an informal conference to re-
107 solve any written objections and satisfy the hearing require-
108 ments of this section thereby.

109 (h) For the purpose of such hearing, the director has the
110 authority and is hereby empowered to administer oaths, sub-
111 poena witnesses and written or printed materials, compel the
112 attendance of witnesses, or production of materials, and take
113 evidence including, but not limited to, inspections of the land
114 affected and other surface-mining operations carried on by the
115 applicant in the general vicinity. A verbatim record of each
116 public hearing required by this section shall be made and a

117 transcript made available on the motion of any party or by
118 order of the director at the cost of the person requesting the
119 transcript.

§20-6-27. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article shall be construed as affecting
2 in any way the rights of any person to enforce or protect,
3 under applicable law, his interest in water resources affected
4 by a surface-mining operation.

5 (b) Any operator shall replace the water supply of an
6 owner of interest in real property who obtains all or part of
7 his supply of water for domestic, agricultural, industrial
8 or other legitimate use from an underground or surface source,
9 where such supply has been affected by contamination, diminu-
10 tion or interruption proximately caused by such surface-mining
11 operation, unless waived by said owner.

§20-6-28. Citizen suits; order of court; damages.

1 (a) Except as provided in subsection (b) of this section,
2 any person having an interest which is or may be adversely
3 affected may commence a civil action in the circuit court
4 of the county to which the surface-mining operation is located
5 on his own behalf to compel compliance with this article:

6 (1) Against the state of West Virginia or any other
7 governmental instrumentality or agency thereof, to the extent
8 permitted by the West Virginia constitution and by law,
9 which is alleged to be in violation of the provisions of
10 this article or any rule, regulation, order or permit issued
11 pursuant thereto, or against any other person who is alleged
12 to be in violation of any rule, regulation, order or permit
13 issued pursuant to this article; or

14 (2) Against the director, reclamation commission, recla-
15 mation board of review or appropriate department employees,
16 to the extent permitted by the West Virginia constitution
17 and by law, where there is alleged a failure of the above
18 to perform any act or duty under this article which is not
19 discretionary.

20 (b) No action may be commenced:

21 (1) Under subdivision (1), subsection (a) of this section:
22 (A) prior to sixty days after the plaintiff has given notice
23 in writing of the violation to the director or to any alleged
24 violator, or (B) if the director has commenced and is
25 diligently prosecuting a civil action in a circuit court to
26 require compliance with the provisions of this article or any
27 rule or regulation, order or permit issued pursuant to this
28 article; or

29 (2) Under subdivision (2), subsection (a) of this section
30 prior to sixty days after the plaintiff has given notice in
31 writing of such action to the director, except that such
32 action may be brought immediately after such notification
33 in the case where the violation or order complained of
34 constitutes an imminent threat to the health or safety of the
35 plaintiff or would immediately affect a legal interest of the
36 plaintiff.

37 (c) Any action respecting a violation of this article or
38 the regulations thereunder may be brought in any appropriate
39 circuit court. In such action under this section, the director,
40 if not a party, may intervene as a matter of right.

41 (d) The court in issuing any final order in any action
42 brought pursuant to subsection (a) of this section may award
43 costs of litigation, including reasonable attorney and expert
44 witness fees, to any party whenever the court determines such
45 award is appropriate. The court may, if a temporary re-
46 straining order or preliminary injunction is sought, require
47 the filing of a bond or equivalent security.

48 (e) Nothing in this section shall restrict any right which
49 any person or class of persons may have under any statute
50 or common law to seek enforcement of any of the provisions
51 of this article and the regulations thereunder or to seek any
52 other relief.

53 (f) Any person or property who is injured in his person
54 through the violation by any operator of any rule, regulation,
55 order or permit issued pursuant to this article may bring an ac-
56 tion for damages, including reasonable attorney and expert wit-
57 ness fees, in any court of competent jurisdiction. Nothing

58 in this subsection shall affect the rights established by or
59 limits imposed under state workmen's compensation laws.

60 (g) This section shall apply to violations of this article and
61 the regulations promulgated thereto, or orders or permits
62 issued pursuant to said article insofar as said violations,
63 regulations, orders and permits relate to surface-mining
64 operations.

§20-6-29. Surface-mining operations not subject to article.

1 The provisions of this article shall not apply to any of
2 the following activities:

3 (1) The extraction of coal by a landowner for his own
4 noncommercial use from land owned or leased by him.

5 (2) The extraction of coal by a landowner engaged in
6 construction, which construction does not require the dis-
7 turbance of more than one acre of privately owned land:
8 *Provided*, That prior to the extraction of coal by such land-
9 owner, he shall affirmatively demonstrate that such con-
10 struction will occur within a reasonable time after surface
11 disturbance.

12 (3) Notwithstanding any other provision of this article,
13 a person or operator shall not be subject to the reclamation
14 requirements of this article when engaged in the removal of
15 borrow and fill material for grading in federal and state
16 highway or other construction projects: *Provided*, That the
17 provisions of the construction contract require the furnishing
18 of a suitable bond which provides for reclamation, wherever
19 practicable, of the area affected by such recovery activity.

§20-6-30. Leasing of lands owned by state for surface mining of coal.

1 No land or interest in land owned by the state may be
2 leased, and no present lease may be renewed by the state,
3 nor any agency of the state, for the purpose of conducting
4 surface-mining operations thereon unless said lease or renewal
5 shall have been first authorized by an act of the Legislature:
6 *Provided*, That the provisions of this section shall not apply to
7 underground mining on such land.

§20-6-31. Special permits for removal of coal incidental to development of land; prohibited acts; application; bond; reclamation for existing abandoned coal processing waste piles.

1 (a) Except where exempted by section twenty-nine of this
2 article, it shall hereafter be unlawful for any person to engage
3 in surface mining as defined in this article as an incident to
4 the development of land for commercial, residential, industrial
5 or civic use without having first obtained from the director a
6 permit therefor as provided in section nine of this article,
7 unless a special permit therefor shall have been first obtained
8 from the director as provided in this section.

9 Application for a special permit to engage in surface mining
10 as an incident to the development of land for commercial, resi-
11 dential, industrial or civic use shall be made in writing on
12 forms prescribed by the director and shall be signed and veri-
13 fied by the applicant. The application shall be accompanied by:

14 (1) A site preparation plan, prepared and certified by or
15 under the supervision of a person approved by the director,
16 showing the tract of land which the applicant proposes to
17 develop for commercial, residential, industrial or civic use;
18 the probable boundaries and areas of the coal deposit to be
19 mined and removed from said tract of land incident to the
20 proposed commercial, residential, industrial or civic use there-
21 of; and such other information as prescribed by the director;

22 (2) A development plan for the proposed commercial, resi-
23 dential, industrial or civic use of said land;

24 (3) The name of owner of the surface of the land to be de-
25 veloped;

26 (4) The name of owner of the coal to be mined incident to
27 the development of the land;

28 (5) A reasonable estimate of the number of acres of coal
29 that would be mined as a result of the proposed development
30 of said land: *Provided*, That in no event may such number of
31 acres to be mined, excluding roadways, exceed five acres;

32 (6) Such other information as the director may require to
33 satisfy and assure the director that the surface mining under

34 the special permit is incidental or secondary to the proposed
35 commercial, residential, industrial or civic use of said land.

36 (b) There shall be attached to the application for the special
37 permit a certificate of insurance certifying that the applicant
38 has in force a public liability insurance policy issued by an in-
39 surance company authorized to do business in this state af-
40 fording personal injury protection in accordance with subsec-
41 tion (d), section ten of this article.

42 The application for the special permit shall also be accom-
43 panied by a bond, or cash or collateral securities or certifi-
44 cates of the same type, in the form as prescribed by the di-
45 rector and in the minimum amount of two thousand dollars
46 per acre, for a maximum disturbance of five acres.

47 The bond shall be payable to the state of West Virginia and
48 conditioned that the applicant shall complete the site prepara-
49 tion for the proposed commercial, residential, industrial or
50 civic use of said land. At the conclusion of the site preparation,
51 in accordance with the site preparation plan submitted with
52 the application, the bond conditions shall be satisfied and the
53 bond and any cash, securities or certificates furnished with
54 said bond may be released and returned to the applicant. The
55 filing fee for the special permit shall be five hundred dollars.
56 The special permit shall be valid until work permitted is com-
57 pleted.

58 (c) The purpose of this section is to vest jurisdiction in the
59 director, where the surface mining is incidental or secondary to
60 the preparation of land for commercial, residential, indus-
61 trial or civic use and where, as an incident to such prepara-
62 tion of land, minerals must be removed, including, but not
63 limited to, the building and construction of railroads, shopping
64 malls, factory and industrial sites, residential and building
65 sites, and recreational areas. Anyone who has been issued a
66 special permit shall not be issued an additional special permit
67 on the same or adjacent tract of land unless satisfactory evi-
68 dence has been submitted to the director that such permit is
69 necessary to subsequent development or construction. As long
70 as the operator complies with the purpose and provisions of this
71 section, the other sections of this article shall not be applic-

72 able to the operator holding a special permit: *Provided*, That
73 the reclamation commission shall promulgate regulations es-
74 tablishing applicable performance standards for operations
75 permitted under this section.

76 (d) The director may, in the exercise of his sound dis-
77 cretion, when not in conflict with the purposes and findings
78 of this article and to bring about a more desirable land use
79 or to protect the public and the environment, issue a special
80 permit solely for the reprocessing of existing abandoned coal
81 processing waste piles. The reclamation commission shall
82 promulgate specific regulations for such operations: *Provided*,
83 That a bond and a reclamation plan shall be required for
84 such operations.

**§20-6-32. Existing permits and performance bond conversion; ex-
emption from design criteria.**

1 (a) All surface disturbance reclamation bonds submitted
2 pursuant to the requirements of chapter twenty-two of this
3 code by the department of mines for operations which con-
4 tinue to operate eight months after the approval of the state
5 program shall be released upon notification by the director
6 of the department of natural resources that the disturbed
7 areas have been bonded in accordance with the provisions
8 of this article: *Provided*, That for those operations permitted
9 after the first day of July, one thousand nine hundred seventy
10 six, and which do not continue operation eight months after
11 the approval of the state program, the director shall notify
12 the director of the department of mines upon reclamation of
13 the site in accordance with the underground opening approval
14 reclamation plan, whereupon such bonds shall be released:
15 *Provided, however*, That forfeiture proceedings shall begin up-
16 on failure of the operator to reclaim within a reasonable time
17 the disturbed area pursuant to a plan approved after the first
18 day of July, one thousand nine hundred seventy-six.

19 (b) With regard to existing structures and facilities, per-
20 sons need not comply with design criteria if such structures
21 and facilities meet the environmental performance standards
22 of this article.

§20-6-33. Experimental practices.

1 In order to encourage advances in surface mining and
2 reclamation practices or to allow postmining land use for
3 industrial, commercial, residential, agricultural or public use,
4 including recreational facilities, the director may authorize de-
5 partures, in individual cases and on an experimental basis, from
6 the environmental protection performance standards promul-
7 gated under this article. Such departures may be authorized
8 if the experimental practices are potentially more or at least
9 as environmentally protective during and after surface-mining
10 operations as those required by promulgated standards; the
11 surface-mining operations approved for particular land use
12 or other purposes are not larger or more numerous than
13 necessary to determine the effectiveness and economic feasi-
14 bility of the experimental practices; and the experimental
15 practices do not reduce the protection afforded health or
16 safety of the public below that provided by promulgated
17 standards.

§20-6-34. Certification and training of blasters.

1 The director of the department of mines shall be respon-
2 sible for the training, examination and certification of persons
3 engaging in or directly responsible for blasting or use of
4 explosives in surface-mining operations.

§20-6-35. Surface miner certification required.

1 After the first day of July, one thousand nine hundred
2 seventy-six, certification shall be required of all surface
3 miners in accordance with the provisions of articles six and
4 six-a, chapter twenty-two of this code and the regulations
5 promulgated thereunder.

§20-6-36. Certification of surface-mine foremen.

1 (a) In every surface mine where five or more persons are
2 employed in a period of twenty-four hours, the operator
3 shall employ at least one person certified in accordance
4 with the provisions of article six-a, chapter twenty-two of
5 this code as a mine foreman. Each applicant for certifica-
6 tion as a mine foreman shall, at the time he is issued a
7 certificate of competency: (1) Be a resident or employed in

8 a mine in this state; (2) have had at least three years' ex-
9 perience in surface mining, which shall include at least
10 eighteen months' experience on or at a working section of a
11 surface mine, or be a graduate of the School of Mines at
12 West Virginia University or of another accredited mining
13 engineering school and have had at least two years' practical
14 experience in a surface mine, which shall include at least
15 eighteen months' experience on or at a working section of
16 a surface mine; and (3) have demonstrated his knowledge
17 of mine safety, first aid, safety appliances, emergency pro-
18 cedures relative to all equipment, state and federal mining
19 laws and regulations and other subjects, by completing such
20 training, education and examinations as may be required of
21 him under article six-a, chapter twenty-two of this code.

22 (b) In surface mines in which the operations are so
23 extensive that the duties devolving upon the mine foreman
24 cannot be discharged by one man, one or more assistant mine
25 foreman may be designated. Such persons shall act under the
26 instruction of the mine foreman who shall be responsible for
27 their conduct in the discharge of their duties. Each assistant
28 so designated shall be certified under the provisions of article
29 six-a, chapter twenty-two of this code. Each applicant for
30 certification as assistant mine foreman shall, at the time he
31 is issued a certificate of competency, possess all of the qualifi-
32 cations required of a mine foreman: *Provided*, That he shall, at
33 the time he is certified, be required to have at least two years'
34 experience in surface mining, which shall include eighteen
35 months on or at a working section of a surface mine or be a
36 graduate of the School of Mines at West Virginia University or
37 of another accredited mining engineering school and have had
38 twelve months' practical experience in a surface mine, all
39 of which shall have been on or at a working section.

40 (c) The director of the department of mines shall pro-
41 mulgate such rules and regulations as may be necessary to
42 carry out the provisions of this section.

§20-6-37. Monthly report by operator.

1 The operator of every surface mine shall, on or before
2 the end of each calendar month, file with the director of

3 the department of mines a report covering the preceding
4 calendar month on forms furnished by said director. Such
5 reports shall state the number of accidents which have oc-
6 curred, the number of persons employed, the days worked
7 and the actual tonnage of raw coal mined.

§20-6-38. Applicability and enforcement of laws safeguarding life and property; regulations; authority of department of mines regarding safety laws.

1 All provisions of the mining laws of this state intended to
2 safeguard life and property shall extend to all surface-mining
3 operations insofar as such laws are applicable thereto. The
4 director of the department of mines shall promulgate reason-
5 able regulations in accordance with the provisions of chapter
6 twenty-nine-a of this code to protect the safety of those em-
7 ployed in and around surface mines. The enforcement of all
8 laws and regulations relating to the safety of those employed
9 in and around surface mines is hereby vested in the department
10 of mines and shall be enforced according to the provisions of
11 chapter twenty-two of this code.

§20-6-39. Conflicting provisions.

1 In the event of any inconsistency or conflict between any
2 provision of this article and any provision of this chapter, the
3 provisions of this article shall control.

§20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.

1 (a) No employee of the department or employee of the
2 reclamation board of review performing any function or duty
3 under this article shall have a direct or indirect financial inter-
4 est in any surface-mining operation. Whoever knowingly
5 violates the provisions of this subsection is guilty of a mis-
6 demeanor, and, upon conviction thereof, shall be fined not
7 more than two thousand five hundred dollars, or imprisoned
8 in the county jail not more than one year, or both fined and
9 imprisoned. The director shall establish methods by which the
10 provisions of this subsection will be monitored and enforced,
11 including appropriate provisions for the filing and the review

12 of statements and supplements thereto concerning any finan-
13 cial interest which may be affected by this subsection.

14 (b) No person shall discharge or in any other way dis-
15 criminate against, or cause to be fired or discriminated against,
16 any employee or any authorized representative of employees
17 by reason of the fact that such employee or representative has
18 filed or instituted, or caused to be filed or instituted, any pro-
19 ceeding under this article, or has testified or is about to testify
20 in any proceeding resulting from the administration or en-
21 forcement of the provisions of this article.

22 (c) Any employee or a representative of employees who
23 has reason to believe that he has been fired or otherwise dis-
24 criminated against by any person in violation of subsection (b)
25 of this section may, within thirty days after such alleged viola-
26 tion occurs, petition to the reclamation board of review for a
27 review of such firing or discrimination. The employee or repre-
28 sentative shall be known as the petitioner and shall serve a copy
29 of the petition upon the person or operator who will be the
30 respondent. The participants shall be given ten days' written
31 notice of the hearing before the board, which such hearing shall
32 be held within thirty days of the filing of the petition. The
33 board shall have the same powers and shall hear the petition in
34 the same manner as provided in subsections (e), (f) and (g) of
35 section twenty-four of this article.

36 (d) If the board finds that the alleged violation did occur,
37 it shall issue an order incorporating therein findings of fact and
38 conclusions requiring the participant committing the violation
39 to take such affirmative action to abate the violation by ap-
40 propriate action, including, but not limited to, the hiring or
41 reinstatement of the employee or representative to his former
42 position with compensation. If the board finds no violation it
43 shall issue a finding to that effect. Orders issued by the board
44 under this section shall be subject to judicial review in the
45 same manner as other orders of the board issued under this
46 article.

47 (e) Whenever an order is issued under this section to abate
48 any violation, at the request of the petitioner a sum equal to
49 the aggregate costs and expenses including attorneys' fees to

50 have been reasonably incurred by the petitioner for, or in con-
51 nection with, the institution and prosecution of such proceed-
52 ings, shall be assessed against the person committing the vio-
53 lation.

§20-6-41. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall
3 not affect other provisions or applications of this article, and
4 to this end the provisions of this article are declared to be
5 severable: *Provided*, That in promulgating rules pursuant to
6 the provisions of this article, the director and the reclamation
7 commission shall note relevant administrative and judicial de-
8 cisions from both state and federal systems and action by the
9 United States Congress or the United States department of the
10 interior.

**§20-6-42. Validity of regulations promulgated under section 502(c)
of the Surface Mining Control and Reclamation Act
of 1977.**

1 (a) All rules and regulations promulgated under section
2 502(c) of the federal Surface Mining Control and Reclama-
3 tion Act of 1977 (Public Law 95-87), pursuant to the provi-
4 sions of chapter sixty-three, acts of the Legislature, regular
5 session, one thousand nine hundred seventy-nine, shall remain
6 in full force and effect until the expiration of eight months
7 after approval of the West Virginia state program under sec-
8 tion 503 of Public Law 95-87 upon proclamation of the gov-
9 ernor that such approval has been granted: *Provided*, That
10 those persons conducting operations under a permit or under-
11 ground opening approval issued in accordance with said sec-
12 tion 502(c), and in compliance therewith, shall be subject to
13 said regulations until the administrative decision pertaining to
14 the granting or denying of a permit under this article has been
15 made by the director.

16 (b) Permits granted under this article shall be subject to
17 rules and regulations promulgated hereunder.

ARTICLE 6C. ABANDONED MINE RECLAMATION ACT.

- §20-6C-1. Short title.
- §20-6C-2. Legislative findings; intent and purpose of article. Jurisdiction and authority of director.
- §20-6C-3. Definitions.
- §20-6C-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.
- §20-6C-5. Powers and duties of director; program plans and reclamation projects.
- §20-6C-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.
- §20-6C-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.
- §20-6C-8. Filling voids and sealing tunnels.
- §20-6C-9. General and miscellaneous powers and duties of director; co-operative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

§20-6C-1. Short title.

- 1 This article shall be known and cited as the "Abandoned
- 2 Mine Lands and Reclamation Act."

§20-6C-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

1 The Legislature finds that there are a substantial number of
2 acres of land throughout the state that were disturbed by
3 surface-mining operations prior to the time of present day
4 effective control and regulation. There was little or no
5 reclamation conducted and the impacts from these unreclaimed
6 lands impose social and economic costs on residents in
7 nearby and adjoining areas as well as continue to impair
8 environmental quality, prevent or damage the beneficial use
9 of land or water resources, or endanger the health and safety
10 of the public.

11 Further the Legislature finds and declares that, due to the
12 passage of Public Law 95-87, certain areas within the bound-
13 aries of this state do not meet present day standards for
14 reclamation.

15 Further, the Legislature finds that Title IV of the Surface
16 Mining Control and Reclamation act of 1977 "Public Law
17 95-87" provides for the collection of thirty-five cents per

18 ton of coal produced from surface mine operations and fifteen
19 cents per ton of coal produced from underground mine
20 operations in West Virginia to be collected by the secretary
21 of the United States department of the interior for a period
22 of at least fifteen years. At least fifty percent of the funds
23 so collected are to be allocated directly to the state of West
24 Virginia to accomplish reclamation of abandoned coal mining
25 operations, once the state of West Virginia obtains an
26 approved abandoned mine reclamation plan in accordance
27 with sections 405 and 503 of Public Law 95-87.

28 Therefore, it is the intent of the Legislature by this article
29 to vest jurisdiction and authority in the director of the depart-
30 ment of natural resources to allow for expedient program
31 approval by, and receipt of funds from, the United States de-
32 partment of the interior to accomplish the desired restoration
33 and reclamation of our land and water resources.

§20-6C-3. Definitions.

1 All definitions set forth in article six of this chapter shall
2 apply to those defined terms which also appear in this article.

§20-6C-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

1 (a) All abandoned land reclamation funds available under
2 Title IV of Public Law 95-87, private donations received, any
3 state appropriated or transferred funds, or funds received from
4 the sale of land by the director, under this article shall be de-
5 posited with the treasurer of the state of West Virginia to the
6 credit of the abandoned land reclamation fund hereby created,
7 and expended pursuant to the requirements of this article.

8 (b) Moneys in the fund may be used by the director for
9 the following:

10 (1) Reclamation and restoration of land and water resourc-
11 es adversely affected by past coal surface-mining operations,
12 including, but not limited to, reclamation and restoration of
13 abandoned surface mine areas, abandoned coal processing areas
14 and abandoned coal processing waste areas; sealing and filling
15 abandoned deep mine entries and voids; planting of land ad-

16 versely affected by past coal surface-mining operations to pre-
17 vent erosion and sedimentation; prevention, abatement, treat-
18 ment and control of water pollution created by coal mine
19 drainage, including restoration of stream beds and construction
20 and operation of water treatment plants; prevention, abatement
21 and control of burning coal processing waste areas and burning
22 coal in situ; prevention, abatement and control of coal mine
23 subsidence; and payment of administrative expenses and all
24 other necessary expenses incurred to accomplish the purpose of
25 this article: *Provided*, That all expenditures from this fund shall
26 reflect the following priorities in the order stated:

27 (A) The protection of public health, safety, general wel-
28 fare and property from extreme danger of adverse effects of
29 past surface mining practices;

30 (B) The protection of public health, safety and general
31 welfare from adverse effects of past coal surface mining prac-
32 tices;

33 (C) The restoration of land and water resources and enviro-
34 nment previously degraded by adverse effects of past coal sur-
35 face-mining practices, including measures for the conservation
36 and development of soil, water (excluding channelization),
37 woodland, fish and wildlife, recreation resources and agricul-
38 tural productivity;

39 (D) Research and demonstration projects relating to the
40 development of surface-mining reclamation and water quality
41 control program methods and techniques;

42 (E) The protection, repair, replacement, construction or
43 enhancement of public facilities such as utilities, roads, re-
44 creation and conservation facilities adversely affected by past
45 coal surface mining practices;

46 (F) The development of publicly owned land adversely
47 affected by past coal surface mining practices, including land
48 acquired as provided in this article for recreation and his-
49 toric purposes, conservation and reclamation purposes and
50 open space benefits.

51 (2) Lands and water eligible for reclamation or drainage
52 abatement expenditures under this article are those which were

53 mined for coal or which were affected by such mining, waste-
54 banks, coal processing or other coal mining processes, and
55 abandoned or left in an inadequate reclamation status prior
56 to the third day of August, nineteen hundred seventy-seven,
57 and for which there is no continuing reclamation responsi-
58 bility: *Provided*, That one purpose of this article is to pro-
59 vide additional and cumulative remedies to abate the pollu-
60 tion of the waters of the state and nothing herein contained
61 shall abridge or alter rights of action or remedies now or here-
62 after existing, nor shall any provisions in this article or any
63 act done by virtue of this article be construed as estopping the
64 state, municipalities, public health officers or persons as ripat-
65 ian owners or otherwise in the exercise of their rights to sup-
66 press nuisances or to abate any pollution now or hereafter
67 existing or to recover damages.

68 (c) Where the governor certifies that the above objectives
69 of the fund have been achieved and there is a need for con-
70 struction of specific public facilities in communities impacted
71 by coal development, and other sources of federal funds are in-
72 adequate and the secretary concurs, then the director may
73 expend money from the fund for such construction.

**§20-6C-5. Powers and duties of director; program plans and reclama-
tion projects.**

1 (a) The director shall submit to the secretary of the
2 interior a state reclamation plan and annual projects to
3 carry out the purposes of this article.

4 (b) That reclamation plan shall generally identify the areas
5 to be reclaimed, the purposes for which the reclamation is
6 proposed, the relationship of the lands to be reclaimed in
7 the proposed reclamation to surrounding areas, the specific
8 criteria for ranking and identifying projects to be funded
9 and the legal authority and programmatic capability to per-
10 form such work in conformance with the provisions of this
11 article.

12 (c) On an annual basis, the director shall submit to the
13 secretary of the interior an application for the support of
14 the state program and implementation of specific reclamation

15 projects. Such annual requests shall include information as
16 may be requested by the secretary of the interior including:

17 (1) A general description of each proposed project;

18 (2) A priority evaluation of each proposed project;

19 (3) A statement of the estimated benefits in such terms
20 as number of acres restored, miles of stream improved, acres
21 of surface lands protected from subsidence, population pro-
22 tected from subsidence, air pollution and hazards of mine
23 and coal refuse disposal area fires;

24 (4) An estimate of the cost for each proposed project;

25 (5) In the case of proposed research and demonstration
26 projects, a description of the specific techniques to be evalu-
27 ated or objective to be attained;

28 (6) An identification of lands or interest therein to be
29 acquired and the estimated cost; and

30 (7) In each year after the first in which a plan is filed
31 under this article, an inventory of each project funded under
32 the previous year's grant, which inventory shall include
33 details of financial expenditures on such project together
34 with a brief description of the project, including project
35 location, landowner's name, acreage and type of reclamation
36 performed.

37 (d) The costs for each proposed project under this section
38 shall include actual construction costs, actual operation and
39 maintenance costs of permanent facilities, planning and en-
40 gineering costs, construction inspection costs and other neces-
41 sary administrative expenses.

**§20-6C-6. Acquisition and reclamation of land adversely affected
by past coal surface-mining practices.**

1 (a) If the director makes a finding of fact that:

2 (1) Land or water resources have been adversely affected
3 by past coal mining practices;

4 (2) The adverse effects are at a stage where, in the
5 public interest, action to restore, reclaim, abate, control or
6 prevent should be taken;

7 (3) The owners of the land or water resources where
8 entry must be made to restore, reclaim, abate, control or
9 prevent the adverse effects of past coal mining practices
10 are not known or readily available; or

11 (4) The owners will not give permission for the director,
12 his agents, employees or contractors to enter upon such
13 property to restore, reclaim, abate, control or prevent the
14 adverse effects of past coal mining practices, then, upon giving
15 notice by mail to the owners, if known, or if not known by
16 posting notice upon the premises and advertising once in a
17 newspaper of general circulation in the county in which
18 the land lies, the director, his agents, employees or contractors
19 shall have the right to enter upon the property adversely
20 affected by past coal mining practices and any other property
21 to have access to such property to do all things necessary or
22 expedient to restore, reclaim, abate, control or prevent the
23 adverse effects. Such entry shall be construed as an exercise
24 of the police power of the state for the protection of public
25 health, safety and general welfare and shall not be construed as
26 an act of condemnation of property nor of trespass thereon.
27 The moneys expended for such work and the benefits accruing
28 to any such premises so entered upon shall be chargeable
29 against such land and shall mitigate or offset any claim in or
30 any action brought by any owner of any interest in such prem-
31 ises for any alleged damages by virtue of such entry: *Provided,*
32 That this provision is not intended to create new rights of
33 action or eliminate existing immunities.

34 (b) The director, his agents, employees or contractors shall
35 have the right to enter upon any property for the purpose of
36 conducting studies or exploratory work to determine the
37 existence of adverse effects of past coal mining practices
38 and to determine the feasibility of restoration, reclamation,
39 abatement, control or prevention of such adverse effects.
40 Such entry shall be construed as an exercise of the police power
41 of the state for the protection of public health, safety and gen-
42 eral welfare and shall not be construed as an act of condem-
43 nation of property nor trespass thereon.

44 (c) The director may acquire any land by purchase, dona-
45 tion or condemnation, which is adversely affected by past

46 coal mining practices, if the director determines that acquisition
47 of such land is necessary to successful reclamation and
48 that:

49 (1) The acquired land, after restoration, reclamation,
50 abatement, control or prevention of the adverse effects of
51 past coal mining practices will serve recreation, historic,
52 conservation, or reclamation purposes or provide open space
53 benefits;

54 (2) Permanent facilities such as a treatment plant or a
55 relocated stream channel will be constructed on the land for
56 the restoration, reclamation, abatement, control or pre-
57 vention of the adverse effects of past coal mining
58 practices; or

59 (3) Acquisition of coal refuse disposal sites and all
60 coal refuse thereon will serve the purposes of this article
61 or that public ownership is desirable to meet emergency
62 situations and prevent recurrences of the adverse effects of
63 past coal mining practices.

64 (d) Title to all lands acquired pursuant to this section
65 shall be in the name of the West Virginia department of
66 natural resources. The price paid for land acquired under
67 this section shall reflect the fair market value of the land
68 as adversely affected by past coal mining practices.

69 (e) The director is hereby authorized to transfer land
70 obtained under subsection (c) of this section to the secre-
71 tary. The director may purchase such land from the secre-
72 tary after reclamation at the fair market value less the state's
73 original acquisition price.

74 (f) The director may accept and local political sub-
75 divisions may transfer to the director land belonging to them
76 to carry out the purposes set out in this article and in
77 such event they shall have a preferential right to pur-
78 chase said land after reclamation at the fair market
79 value less the political subdivision's cost of acquisition,
80 but at no time shall the director sell such land to a
81 political subdivision at a price less than the cost of the
82 acquisition and reclamation of said land: *Provided, That if*

83 any land sold to a political subdivision under this sub-
84 section is not used for a valid public purpose as speci-
85 fied by the director in the terms and conditions of the
86 sales agreement, then all rights, title and interest in such
87 land shall revert to the West Virginia department of natural
88 resources. Any moneys received from such sale shall be de-
89 posited in the abandoned land reclamation fund.

90 (g) Where land acquired pursuant to this section is deemed
91 to be suitable for industrial, commercial, residential or re-
92 creational development, the director may sell such land by
93 public sale under a system of competitive bidding at not less
94 than fair market value and pursuant to regulations promul-
95 gated to ensure that such lands are put to proper use consistent
96 with state and local land use plans.

97 (h) The director, if requested and after appropriate pub-
98 lic notice, shall hold a public hearing in the county in which
99 land acquired pursuant to this section is located. The hearing
100 shall be held at a time which shall afford local citizens and
101 government the maximum opportunity to participate in the
102 decision concerning the use and disposition of the land after
103 restoration, reclamation, abatement, control or prevention of
104 the adverse effects of past coal mining practices.

105 (i) In addition to the authority to acquire land under other
106 provisions of this section, the director is authorized to use
107 money in the fund to acquire land from any federal, state or
108 local government or from a political subdivision thereof, or
109 from any person, firm, association or corporation, if he de-
110 termines that such is an integral and necessary element of an
111 economically feasible plan for the project to construct or re-
112 habilitate housing for persons disabled as the result of em-
113 ployment in the mines or work incidental thereto, persons dis-
114 placed by acquisition of land pursuant to this section, or per-
115 sons dislocated as the result of adverse effects of coal mining
116 practices which constitute an emergency as provided in section
117 410 of Public Law 95-87, or persons dislocated as the
118 result of natural disasters or catastrophic failures from
119 any cause. Such activities shall be accomplished under such
120 terms and conditions as the director shall require, which may

121 include transfers of land with or without monetary consid-
122 eration: *Provided*, That to the extent that the consideration is
123 below the fair market value of the land transferred, no portion
124 of the difference between the fair market value and the con-
125 sideration shall accrue as a profit to such person, firm, as-
126 sociation or corporation. No part of the funds provided under
127 this article may be used to pay the actual construction costs
128 of housing. The director may carry out the purposes of this
129 subsection directly or he may make grants and commitments
130 for grants, and may advance money under such terms and con-
131 ditions as he may require to any department, agency or politi-
132 cal subdivision of this state, or any public body or nonprofit
133 organization designated by the director.

**§20-6C-7. Liens against reclaimed land; petition by landowner;
appeal; priority of liens.**

1 (a) Within six months after the completion of a project
2 to restore, reclaim, abate, control or prevent adverse effects
3 of past coal mining practices on privately owned land, the
4 director shall itemize the moneys so expended and may file
5 a statement thereof in the office of the clerk of the county
6 commission in the county in which the land lies, together
7 with a notarized appraisal by an independent appraiser of
8 the value of the land before the restoration, reclamation,
9 abatement, control or prevention of adverse effects of past
10 surface-mining practices, if the moneys so expended result
11 in a significant increase in property value. Such statement
12 shall constitute a lien upon the said land. The lien shall not
13 exceed the amount determined by the appraisal to be the
14 increase in the market value of the land as a result of the
15 restoration, reclamation, abatement, control or prevention
16 of the adverse effects of past surface mining practices. No
17 lien may be filed against the property of any person in
18 accordance with this subsection, who owned the surface prior
19 to the second day of May, one thousand nine hundred seventy-
20 seven, and who neither consented to, nor participated in, nor
21 exercised control over the mining operation which necessitated
22 the reclamation performed hereunder.

23 (b) The landowner may petition the director within sixty

24 days of the filing of the lien to determine the increase in
25 the market value of the land as a result of the restoration,
26 reclamation, abatement, control or prevention of the adverse
27 effects of past coal mining practices. The amount reported
28 to be the increase in value of the premises shall constitute
29 the amount of lien and shall be recorded with the statement
30 herein provided. Any party aggrieved by the decision may
31 appeal to the circuit court of the county in which the land is
32 located.

33 (c) The statement filed pursuant to subsection (a) of this
34 section, shall constitute a lien upon the said land as of the
35 date of the expenditure of the moneys and shall have priority
36 as a lien second only to the lien of real estate taxes imposed
37 upon said land.

§20-6C-8. Filling voids and sealing tunnels.

1 (a) The Legislature declares that voids, open and aban-
2 doned tunnels, shafts and entryways and subsidence resulting
3 from any previous coal surface-mining operation constitute
4 a hazard to the public welfare and safety and that surface
5 impacts of any underground or surface-mining operation may
6 degrade the environment. The director is authorized to fill
7 such voids, seal such abandoned tunnels, shafts and entry-
8 ways, and reclaim surface impacts of underground or surface
9 mines and remove water and other matter from mines which
10 the director determines could endanger life and property,
11 constitute a hazard to the public welfare and safety or degrade
12 the environment.

13 (b) In those instances where coal mine waste piles are
14 being reworked for conservation purposes, the incremental
15 costs of disposing of the wastes from such operations by
16 filling voids and sealing tunnels may be eligible for fund-
17 ing, if the disposal of those wastes meets the purposes of this
18 article.

19 (c) The director may acquire by purchase, donation, ease-
20 ment or otherwise such interest in land as he determines
21 necessary to carry out the provisions of this section.

§20-6C-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

1 (a) The director is authorized to engage in any work
2 and to do all things necessary and proper, including promulga-
3 tion of rules and regulations, to implement and administer
4 the provisions of this article.

5 (b) The director is authorized to engage in coopera-
6 tive projects under this article with any other agency of
7 the United States of America, any state, county or municipal
8 agency or subdivision thereof.

9 (c) The director may request the attorney general, who is
10 hereby authorized to initiate, in addition to any other remedies
11 provided for in this article, in any court of competent juris-
12 diction, an action in equity for an injunction to restrain any
13 interference with the exercise of the right to enter or to
14 conduct any work provided in this article.

15 (d) The director has the authority to construct and
16 operate a plant or any facilities for the control and treatment
17 of water pollution resulting from mine drainage. The extent
18 of this control and treatment may be dependent upon the
19 ultimate use of the water: *Provided*, That this subsection
20 shall not repeal or supersede any portion of the applicable
21 federal or state water pollution control laws and no control
22 or treatment under this section may be less than that required
23 under any applicable federal or state water pollution control
24 law. The construction of any such facilities may include
25 major interceptors and other facilities appurtenant to the
26 plant.

27 (e) All departments, boards, commissions and agencies of
28 the state shall cooperate with the director by providing
29 technical expertise, personnel, equipment, materials and sup-
30 plies to implement and administer the provisions of this article.

CHAPTER 22. MINES AND MINERALS.

Article

2. Coal Mines.

6. Certification of Underground and Surface Coal Miners.

6A. Board of Miner Training, Education and Certification.

ARTICLE 2. COAL MINES.**§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.**

1 (a) After the effective date of this section, no mine shall
2 be opened or reopened unless prior approval has been ob-
3 tained from the director of the department of mines, which
4 approval shall not be unreasonably withheld. The operator
5 shall pay for such approval a fee of ten dollars, which payment
6 shall be tendered with the operator's application for such
7 approval: *Provided*, That mines producing coal solely for the
8 operator's use shall be issued a permit without charge if coal
9 production will be less than fifty tons a year.

10 (b) Within thirty days after the first day of January of each
11 year, the operator of each mine holding a certificate evidencing
12 approval of the director to open a mine shall apply for the ex-
13 tension of such certificate of approval for an additional year.
14 Such approval, evidenced by a certificate of the director, shall
15 be granted as a matter of right and without charge if, at the
16 time such application is made, the operator is in compliance
17 with the provisions of section seventy-two of this article and has
18 paid or otherwise appealed all coal mine assessments imposed
19 under article one, chapter twenty-two of this code. Applications
20 for extension of such certificates of approval not submitted
21 within the time required shall be processed as an application
22 to open or reopen a mine and shall be accompanied by a fee
23 of ten dollars.

24 (c) Certificates of approval issued pursuant to this section
25 shall not be transferable.

26 (d) The provisions of this section shall be printed on the
27 reverse side of every certificate issued hereunder.

28 (e) The district mine inspector shall be contacted for a pre-
29 inspection of the area proposed for underground mining prior
30 to the issuance of any new opening approval.

ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.**§22-6-2. Definitions.**

1 For purposes of this article, the term "surface miner" means
2 a person employed at a "surface mine," as that term is defined
3 in section three, article six, chapter twenty of this code, and in
4 section two, article six-d of said chapter.

5 For purposes of this article, the term "underground miner"
6 means an underground worker in a bituminous coal mine, ex-
7 cept as hereinafter provided.

8 For the purposes of this article, the term "board of miner
9 training, education and certification" means that board estab-
10 lished in article six-a of this chapter.

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**§22-6A-3. Definitions.**

1 Unless the context in which a word or phrase appears clear-
2 ly requires a different meaning, the words defined in section
3 one, article one of this chapter shall have when used in this
4 article the meaning therein assigned to them. These words in-
5 clude but are not limited to the following: Department, di-
6 rector of the department of mines, mine inspector, operator,
7 miner, shot firer and certified electrician.

8 "Board" means the board of miner training, education and
9 certification established by section four of this article.

10 "Mine" means any mine, including a "surface mine," as that
11 term is defined in section three, article six, chapter twenty of
12 this code, and in section two, article six-d of said chapter; and
13 a "mine" as that term is defined in section one, article one,
14 chapter twenty-two of this code.

CHAPTER 88

(Com. Sub. for H. B. 1551—By Mr. Speaker, Mr. See, and Mr. Teets)

[Passed March 8, 1980; in effect upon the proclamation of the Governor finding that the approval of the West Virginia state program under Section 503 of the federal "Surface Mine Control and Reclamation Act of 1977" has been given by the Secretary of the U. S. Department of the Interior. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-d, relating to surface-mining and reclamation of mineral other than coal; jurisdiction in department of natural resources; legislative purpose; apportionment of resources; legislative purpose; apportionment of responsibility; conflict of interest; penalty; definitions; division of reclamation; authority of division; duties and functions of surface-mining reclamation supervisors and inspectors; qualification and appointment; salary; enforcement, authority and duties of reclamation commission; surface-mine permits required; application, issuance and renewal of permits; permit fees and use of proceeds; preplans; drainage systems; alternative plans; limitations on surface mining; mandamus; blasting restriction formula; filing blasting preplan; penalties and notice; time limits on reclamation; authority of commission and director to promulgate rules and regulations; obligations of the operator; exceptions; cessation of operation by inspector; completion of planting; inspection and evaluation; performance bonds; exceptions from reclamation for highway construction; applicability of laws safeguarding life and property; monthly reports by operator; interdepartmental cooperation; notice of noncompliance; adjudications, determinations or findings of director and commission; appeals to board; hearing; findings and orders of board; notice; hearing; subpoenas; judicial review; appeal from order of board; offenses; criminal penalties; prosecutions; treble damages; injunctive relief; validity and construction of existing surface-mining permits; certification of surface miners; and certification of surface-mine foremen.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-d, to read as follows:

ARTICLE 6D. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.

- §20-6D-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.
- §20-6D-2. Definitions.
- §20-6D-3. Division of reclamation; duties and functions.
- §20-6D-4. Surface-mining reclamation supervisors and inspectors, appointment and qualifications; salary.
- §20-6D-5. Duties of surface-mining reclamation inspectors.
- §20-6D-6. Reclamation commission and authority.
- §20-6D-7. Permit required; applications; issuance and renewals; fees and use of proceeds.
- §20-6D-8. Preplans.
- §20-6D-9. Installation of drainage system.
- §20-6D-10. Alternative plans; time.
- §20-6D-11. Limitations; mandamus.
- §20-6D-11a. Blasting restriction; formula; filing preplan; penalties; notice.
- §20-6D-12. Time in which reclamation shall be done.
- §20-6D-13. Obligations of the operator.
- §20-6D-14. Cessation of operation by inspector.
- §20-6D-15. Completion of planting; inspection and evaluation.
- §20-6D-16. Performance bonds.
- §20-6D-17. Exception as to highway construction projects from reclamation requirements.
- §20-6D-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.
- §20-2D-19. Monthly report by operator.
- §20-6D-20. Rules and regulations.
- §20-6D-21. Noncompliance.
- §20-6D-22. Adjudications, findings, etc., to be by written order; contents; notice.
- §20-6D-23. Appeals to board; hearing; record; findings and orders of board.
- §20-6D-24. Appeal from order of board.
- §20-6D-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.
- §20-6D-26. Validity and construction of existing surface-mining permits.
- §20-6D-27. Certification of surface miners.
- §20-6D-28. Certification of surface-mine foremen.

§20-6D-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.

- 1 Except as otherwise provided in section eighteen of this
- 2 article, the department of natural resources is hereby vested
- 3 with jurisdiction over all aspects of surface mining and with

4 jurisdiction and control over land, water and soil aspects
5 pertaining to surface-mining operations, and the restoration
6 and reclamation of lands surface mined and areas affected
7 thereby.

8 The Legislature finds that, although surface mining pro-
9 vides much needed employment and has produced good safety
10 records, unregulated surface mining causes soil erosion, pyritic
11 shales and materials landslides, noxious materials, stream
12 pollution and accumulation of stagnant water, increases the
13 likelihood of floods and slides, destroys the value of some
14 lands for agricultural purposes and some lands for recreational
15 purposes, destroys aesthetic values, counteracts efforts for
16 the conservation of soil, water and other natural resources,
17 and destroys or impairs the health, safety, welfare and
18 property rights of the citizens of West Virginia, where proper
19 mining and reclamation is not practiced.

20 The Legislature also finds that there are wide variations
21 regarding location and terrain conditions surrounding and
22 arising out of surface mining primarily in topographical and
23 geological conditions, and by reason thereof, it is necessary to
24 provide the most effective, beneficial and equitable solution
25 to the problems involved.

26 The Legislature further finds that authority should be
27 vested in the director of the department of natural resources
28 to administer and enforce the provisions of this article.

29 The director of the department of natural resources and
30 the director of the department of mines shall cooperate with
31 respect to departmental programs and records so as to effect
32 an orderly and harmonious administration of the provisions
33 of this article. The director of natural resources may avail
34 himself of any services which may be provided by other
35 state agencies in this state and other states or by agencies
36 of the federal government, and may reasonably compensate
37 them for such services. He may also receive any federal funds,
38 state funds or any other funds for the reclamation of land
39 affected by surface mining.

40 No public officer or employee in the department of natural

41 resources, the department of mines, or the office of attorney
42 general, having any responsibility or duty either directly or
43 of a supervisory nature with respect to the administration
44 or enforcement of this article shall (1) engage in surface
45 mining as a sole proprietor or as a partner or (2) be an officer,
46 director, stockholder, owner or part owner of any corporation
47 or other business entity engaged in surface mining or (3) be
48 employed as an attorney, agent or in any other capacity by
49 any person, partnership, firm, association, trust or corporation
50 engaged in surface mining. Any violation of this paragraph
51 by any such public officer or employee shall constitute grounds
52 for his removal from office or dismissal from his employ-
53 ment, as the case may be.

§20-6D-2. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (a) "Adequate treatment" shall mean treatment of water
4 by physical, chemical or other approved methods in a manner
5 that will cause the analyzed pH level of the treated water
6 to be 6.0 - 9.0 and analyzed content of iron of the treated
7 water to be seven milligrams per liter or less, or approved
8 treatment which will not lower the water quality standards
9 established for the river, stream or drainway into which such
10 water is released.

11 (b) "Breakthrough" shall mean the release of water which
12 has been trapped or impounded underground, or the release
13 of air into any underground cavity, pocket or area.

14 (c) "Director" shall mean the director of natural resources
15 or his authorized agents.

16 (d) "Disturbed land" or "land disturbed" shall mean (1)
17 the area from which the overburden has been removed in
18 surface-mining operation, (2) the area covered by the spoil,
19 and (3) any areas used in surface-mining operations which
20 by virtue of their use are susceptible to excessive erosion
21 including all lands disturbed by the construction or improve-
22 ment of haulageways, roads or trails.

23 (e) "Minerals" shall mean clay, flagstone, gravel, lime-
24 stone, manganese, sand, sandstone, shale, iron ore and any
25 other metal or metallurgical ore: *Provided*, That the term
26 minerals does not include coal.

27 (f) "Mulch" shall mean any natural or plant residue,
28 organic or inorganic material, applied to the surface of the
29 earth to retain moisture and curtail or limit soil erosion.

30 (g) "Operator" shall mean any individual, partnership,
31 firm, association, trust or corporation who or which is granted
32 or should obtain a permit to engage in any activity covered by
33 this article.

34 (h) "Permit area" shall mean the area of land indicated
35 on the approved map submitted by the operator with the
36 reclamation plan as specified in section eight of this article
37 showing the exact location of end strip markers, permit
38 markers and monuments.

39 (i) "Person" shall mean any individual, partnership, firm,
40 association, trust or corporation.

41 (j) "Surface mine" shall mean all areas surface mined or
42 being surface mined, as well as adjacent areas ancillary to
43 the operation, together with preparation and processing plants,
44 storage areas and haulageways, roads or trails.

45 (k) "Surface mining" shall mean all activity for the re-
46 covery of minerals, and all plants and equipment used in
47 processing said minerals: *Provided*, That the bonding and
48 reclamation provisions of this article shall not apply to surface
49 mining of limestone, sandstone and sand: *Provided, however*,
50 That the surface mining of limestone, sandstone and sand
51 shall be subject to separate rules and regulations to be pro-
52 mulgated by the commission.

53 (l) "Surface of a regraded bench" shall mean the top
54 portion or part of any regraded area.

§20-6D-3. Division of reclamation; duties and functions.

1 Except as otherwise provided in this article, the division
2 of reclamation, created in article six of this chapter, shall

3 administer all of the laws of this state relating to surface
4 mining and subject to the approval of the director of natural
5 resources shall exercise all of the powers and perform all
6 of the duties by law vested in and imposed upon said director
7 in relation to said operations. The jurisdiction, supervision
8 and enforcement authority granted the division in this article
9 shall be in addition to the jurisdiction, supervision and en-
10 forcement authority granted in this chapter. The division shall
11 cooperate with other offices and divisions of the department
12 of natural resources.

**§20-6D-4. Surface-mining reclamation supervisors and inspectors,
appointment and qualifications; salary.**

1 The director shall determine the number of surface-mining
2 reclamation supervisors and inspectors needed to carry out
3 the purposes of this article and appoint them as such. All
4 such appointees shall be qualified civil service employees, but
5 no person shall be eligible for such appointment until he
6 has served in a probationary status for a period of one year
7 to the satisfaction of the director of natural resources:
8 *Provided*, That the provisions of this section shall not affect
9 the status of persons employed on the effective date of this
10 article as reclamation inspectors under the former provisions
11 of chapter twenty, if such persons are qualified civil service
12 employees.

13 Every surface-mining reclamation supervisor or inspector
14 shall be paid not less than fifteen thousand dollars per year.

§20-6D-5. Duties of surface-mining reclamation inspectors.

1 The surface-mining reclamation inspectors shall make all
2 necessary surveys and inspections of surface-mining opera-
3 tions, shall administer and enforce all surface-mining laws,
4 rules and regulations, and shall perform such other duties
5 and services as may be prescribed by the director. Such
6 inspectors shall give particular attention to all conditions
7 of each permit to ensure complete compliance therewith. The
8 director shall cause inspections to be made of each active
9 surface-mining operation in this state by a surface-mining
10 reclamation inspector at least once every fifteen days. Said

11 inspector shall note and describe violations of this article and
12 immediately report such violations to the director in writing,
13 furnishing at the same time a copy of such report to the
14 operator concerned.

§20-6D-6. Reclamation commission and authority.

1 The reclamation commission created by article six of this
2 chapter shall have authority to:

3 (a) Promulgate reasonable rules and regulations, in accord-
4 dance with the provisions of chapter twenty-nine-a of this
5 code, to implement the provisions of this article;

6 (b) Make investigations or inspections necessary to ensure
7 complete compliance with the provisions of this article;

8 (c) Conduct hearings under provisions of this article or
9 rules and regulations adopted by the commission and for the
10 purpose of any investigation or hearing, hereunder, the
11 commission or any member thereof may administer oaths or
12 affirmations, subpoena witnesses, compel their attendance,
13 take evidence and require production of any books, papers,
14 correspondence, memoranda, agreements, or other documents
15 or records relevant or material to the inquiry;

16 (d) Order, through the director, the suspension or revoca-
17 tion of any permit for failure to comply with any of the
18 provisions of this article or any rules and regulations adopted
19 pursuant thereto;

20 (e) Order, through the director, a cease and desist order
21 of any operation that is started without a permit as required
22 by law;

23 (f) Appoint such advisory committees as may be of assist-
24 tance to the commission in the development of programs
25 and policies: *Provided*, That such advisory committees shall,
26 in each instance, include members representative of the
27 general public; and

28 (g) Review orders and decisions of the director.

**§20-6D-7. Permit required; applications; issuance and renewals;
fees and use of proceeds.**

1 It shall hereafter be unlawful for any person to engage in

2 surface mining without having first obtained from the depart-
3 ment of natural resources a permit therefor as provided in this
4 section. Application for a surface-mining permit shall be made
5 in writing on forms prescribed by the director of natural re-
6 sources, and shall be signed and verified by the applicant.
7 The application, in addition to such other information as may
8 be reasonably required by the director, shall contain the fol-
9 lowing information: (1) The common name and geologic title,
10 where applicable, of the mineral or minerals to be extracted;
11 (2) maps and plans as provided in section eight hereof; (3)
12 the owner or owners of the surface of the land to be mined;
13 (4) the owner or owners of the mineral to be mined; (5) the
14 source of the operator's legal right to enter and conduct oper-
15 ations on the land to be covered by the permit; (6) a reason-
16 able estimate of the number of acres of land that will be dis-
17 turbed by mining on the area to be covered by the permit;
18 (7) the permanent and temporary post-office addresses of the
19 applicant and of the owners of the surface and the mineral;
20 (8) whether any surface-mining permits are now held and the
21 numbers thereof; (9) the names and post-office addresses of
22 every officer, partner, director (or person performing a similar
23 function), of the applicant, together with all persons, if any,
24 owning of record or beneficially (alone or with associates), if
25 known, ten percent or more of any class of stock of the appli-
26 cant: *Provided*, That if such list be so large as to cause undue
27 inconvenience, the director may waive the requirements that
28 such list be made a part of such application, except the names
29 and current addresses of every officer, partner, director and
30 applicant must accompany such application; (10) if known,
31 whether applicant, any subsidiary or affiliate or any person
32 controlled by or under common control with applicant, or any
33 person required to be identified by item (9) above, has ever
34 had a surface-mining permit issued under the laws of
35 this state revoked or has ever had a surface-mining bond,
36 or security deposited in lieu of bond, forfeited; and (11) names
37 and addresses of the reputed owner or owners of all surface
38 area within five hundred feet of any part of proposed disturbed
39 land, which such owners shall be notified by registered or cer-
40 tified mail of such application and such owners shall be given
41 ten days within which to file written objections thereto, if any,

42 with the director. There shall be attached to the application a
43 true copy of an original policy of insurance issued by an in-
44 surance company authorized to do business in this state cover-
45 ing all surface-mining operations of the applicant in this state
46 and affording personal injury protection in an amount not
47 less than one hundred thousand dollars and property damage,
48 including blasting damage, protection in an amount of not less
49 than three hundred thousand dollars.

50 The director shall upon receipt of the application for a per-
51 mit cause to be published, as a Class III legal advertisement
52 in accordance with the provisions of article three, chapter fifty-
53 nine of this code, a notice of the application for the permit.
54 Such notice shall contain in abbreviated form the information
55 required by this section, together with the director's state-
56 ment that written protests to such application will be re-
57 ceived by him until a specified date, which date shall be at
58 least thirty days after the first publication of the notice.

59 The publication area of the notices required by this section
60 shall be the county or counties in which the proposed permit
61 area is located. The cost of all publications required by this
62 section shall be borne by the applicant.

63 Upon the filing of an application in proper form, accom-
64 panied by the fees and bond required by this article and said
65 true copy of the policy of insurance, and after consideration
66 of the merits of the application and written protests, if any,
67 the director may issue the permit applied for if the applicant
68 has complied with all of the provisions of this article. If the
69 director finds that the applicant is or has been affiliated with
70 or managed or controlled by, or is or has been under the com-
71 mon control of, other than as an employee, a person who
72 or which has had a surface-mining permit revoked or bond
73 or other security forfeited for failure to reclaim lands as re-
74 quired by the laws of this state, he shall not issue a permit to
75 the applicant: *Provided*, That no surface-mining permit shall
76 be refused because of any past revocation of a permit and
77 forfeiture of a bond or other security if such revocation and
78 forfeiture occurred before July one, one thousand nine hundred
79 seventy-one, and if, after such revocation and forfeiture, the
80 operator whose permit has been revoked and bond forfeited

81 shall have paid into the surface-mining reclamation fund the
82 full amount of the bond so forfeited, and any additional sum
83 of money determined by the director to be adequate to re-
84 claim the land covered by such forfeited bond: *Provided,*
85 *however,* That in no event shall such additional sum be less
86 than sixty dollars per acre.

87 The permit shall be valid for one year from its date of
88 issue. Upon verified application, containing such information
89 as the director may reasonably require, accompanied by such
90 fees and bond as are required by this article, and a true copy
91 of the policy of insurance as aforesaid, the director shall from
92 year to year renew the permit, if the operation is in com-
93 pliance with the provisions of this article.

94 The registration fee for all permits for surface mining, shall
95 be five hundred dollars. The annual renewal fee for permits
96 for surface mining shall be one hundred dollars payable on the
97 anniversary date of said permit upon renewal.

98 The permit of any operator who fails to pay any fees pro-
99 vided for in this article shall be revoked.

100 All registration and renewal fees for surface mining shall
101 be collected by the director and shall be deposited with the
102 treasurer of the state of West Virginia to the credit of the oper-
103 ating permit fees fund and shall be used, upon requisition of
104 the director, for the administration of this article.

§20-6D-8. Preplans.

1 Under the provisions of this article, and rules and regula-
2 tions adopted by the commission, the operator shall prepare
3 a complete reclamation and mining plan for the area of land
4 to be disturbed. Said reclamation and mining plan shall
5 include a proposed method of operation, prepared by a regis-
6 tered professional engineer or a person approved by the
7 director, for grading, backfilling, soil preparation, mining
8 and planting and such other proposals as may be necessary
9 to develop the complete reclamation and mining plan con-
10 templated by this article. In developing this complete recla-
11 mation and mining plan all reasonable measures shall be
12 taken to eliminate damages to members of the public, their

13 real and personal property, public roads, streams and all
14 other public property from soil erosion, rolling stones and
15 overburden, water pollution and hazards dangerous to life
16 and property. The plan shall be submitted to the director
17 and the director shall notify the applicant by certified
18 mail within thirty days after receipt of the plan and complete
19 application if it is or is not acceptable. If the plan is not
20 acceptable, the director shall set forth the reasons why the
21 plan is not acceptable, and he may propose modifications,
22 delete areas or reject the entire plan. Should the applicant
23 disagree with the decision of the director, he may, by written
24 notice, request a hearing before the commission. The com-
25 mission shall hold such hearing within thirty days after
26 receipt of this notice. When a hearing is held by the com-
27 mission, it shall notify the applicant of its decision by certified
28 mail within twenty days after the hearing. Any person
29 aggrieved by a final order of the commission made after
30 the hearing or without a hearing may appeal to the reclama-
31 tion board of review.

32 The application for a permit shall be accompanied by
33 copies of an enlarged United States geological survey
34 topographic map meeting the requirements of the subdivisions
35 below. Aerial photographs of the area shall be acceptable
36 if the plan for reclamation can be shown to the satisfaction
37 of the director. The maps shall:

38 (a) Be prepared and certified by or under the super-
39 vision of a registered professional civil engineer, or a regis-
40 tered professional mining engineer, or a registered land sur-
41 veyor, who shall submit to the director a certificate of regis-
42 tration as a qualified engineer or land surveyor;

43 (b) Identify the area to correspond with the application;

44 (c) Show probable limits of adjacent deep-mining opera-
45 tions, probable limits of adjacent inactive or mined-out deep-
46 mined areas and the boundaries of surface properties and
47 names of surface and mineral owners of the surface area
48 within five hundred feet of any part of the proposed disturbed
49 area;

50 (d) Be of such scale as may be prescribed by the director;

51 (e) Show the names and locations of all streams, creeks
52 or other bodies of public water, roads, buildings, cemeteries,
53 active, abandoned or plugged oil and gas wells, and utility
54 lines on the area of land to be disturbed and within five
55 hundred feet of such area;

56 (f) Show by appropriate markings the boundaries of the
57 area of land to be disturbed, the crop line of the seam to
58 be mined, if any, and the total number of acres involved in
59 the area of land to be disturbed;

60 (g) Show the date on which the map was prepared, the
61 north point and the quadrangle sketch and exact location of
62 the operation;

63 (h) Show the drainage plan on and away from the area of
64 land to be disturbed. Such plan shall indicate the directional
65 flow of water, constructed drainways, natural waterways
66 used for drainage, and the streams or tributaries receiving
67 or to receive this discharge. Upon receipt of such drainage
68 plan, the director may furnish to the chief of the division
69 of water resources a copy of all information required by this
70 subdivision, as well as the names and locations of all streams,
71 creeks or other bodies of public water within five hundred
72 feet of the area to be disturbed;

73 (i) Show the presence of any acid-producing materials
74 which when present in the overburden, may cause spoil with
75 a pH factor below 3.5, preventing effective revegetation.
76 The presence of such materials, wherever occurring in sig-
77 nificant quantity, shall be indicated on the map, filed with
78 the application for permit. The operator shall also indicate the
79 manner in which acid-bearing spoil will be suitably prepared
80 for revegetation and stabilization, whether by application
81 of mulch or suitable soil material to the surface or by some
82 other type of treatment, subject to approval of the director.

83 The operator shall also indicate the manner in which all
84 permanent overburden disposal sites will be stabilized.

85 The certification of the maps shall read as follows: "I,
86 the undersigned, hereby certify that this map is correct, and
87 shows to the best of my knowledge and belief all the informa-

88 tion required by the surface-mining laws of this state." The
89 certification shall be signed and notarized. The director may
90 reject any map as incomplete if its accuracy is not so
91 attested.

92 In addition to the information and maps required above,
93 each application for a permit shall be accompanied by a
94 detailed reclamation plan as required by this article.

95 A monument as prescribed by the department of natural
96 resources shall be placed in an approved location near the
97 operation. If the operations under a single permit are not
98 geographically continuous, the operator shall locate addi-
99 tional monuments and submit additional maps before mining
100 other areas.

101 Upon an order of the director, the operator shall, within
102 thirty days after service of a copy of said order upon said
103 operator by certified United States mail, furnish to the de-
104 partment of natural resources four copies of a progress map
105 prepared by or under the supervision of a registered pro-
106 fessional civil engineer or registered professional mining engi-
107 neer, or by a registered land surveyor, showing the area dis-
108 turbed by operations to the date of such map. Such progress
109 map shall contain information identical to that required for
110 both the proposed and final maps, required by this article, and
111 shall show in detail completed reclamation work, as required
112 by the director. Such progress map shall include a geologic
113 survey sketch showing the location of the operation, shall be
114 properly referenced to a permanent landmark, and shall be
115 within such reasonable degree of accuracy as may be pre-
116 scribed by the director. If no land has been disturbed by
117 operations during the preceding year, the operator shall notify
118 the director of this fact. A final map shall be submitted within
119 sixty days after completion of mining operations. Failure
120 to submit maps or aerial photographs or notices at specified
121 times shall cause the permit in question to be suspended.

§20-6D-9. Installation of drainage system.

1 Prior to the beginning of surface-mining operations, the
2 operator shall complete and shall thereafter maintain a drain-

3 age system including any necessary settling ponds in accordance
4 with the rules and regulations as established by the commis-
5 sion.

§20-6D-10. Alternative plans; time.

1 An operator may propose alternative plans not calling for
2 backfilling where a water impoundment is desired, if such re-
3 storation will be consistent with the purpose of this article.
4 Such plans shall be submitted to the director, and if such plans
5 are approved by the director and complied with within such
6 time limits as may be determined by him as being reasonable
7 for carrying out such plans, the backfilling requirements of
8 this article may be modified.

9 By regulations of the commission, time limits shall be es-
10 tablished requiring backfilling, grading and planting to be
11 kept current. All backfilling and grading shall be completed
12 before equipment necessary for such backfilling and grading is
13 moved from the operation.

14 If the operator or other person desires to conduct deep
15 mining upon the premises or use a deep-mine opening for
16 haulageways or other lawful purposes, the operator may desig-
17 nate locations to be used for such purposes at which places
18 it will not be necessary to backfill as herein provided for until
19 such deep mining or other use is completed, during which
20 time the bond on file for that portion of the operation shall
21 not be released. Such locations shall be described and desig-
22 nated on the map required by the provisions of section eight of
23 this article.

24 Where applicable, suitable soil material shall be used to
25 cover the surface of the regraded and backfilled area of oper-
26 ation in an amount sufficient to support vegetation.

27 When the backfilling and grading have been completed and
28 approved by the director, the director shall release that por-
29 tion of the bond which was filed and designated to cover the
30 backfilling and grading requirements of this article, the remain-
31 ing portion of the bond in an amount equal to two hundred
32 fifty dollars per acre, but not less than a total amount of five
33 thousand dollars being retained by the treasurer until such

34 time as the planting and revegetation is done according to law
35 and is approved by the director, at which time the director
36 shall release the remainder of the bond.

37 All fill and cut slopes shall be seeded during the first
38 planting or seeding season after the construction of a haulage-
39 way to the area. Upon abandonment of any haulageway, the
40 haulageway shall be seeded and every effort made to prevent
41 its erosion by means of culverts, waterbars or other devices
42 required by the director. In proper season, all fill and cut
43 slopes of the operation and haulageways shall be seeded and
44 planted in a manner as prescribed by the director, as soil tests
45 indicate soil suitability and in accordance with accepted agri-
46 cultural and reforestation practices.

47 In any such area where surface mining is being conducted,
48 mulch shall be required on all disturbed areas where the re-
49 maining slope exceeds twenty degrees from horizontal as shown
50 on the preplan map filed with the director as required by the
51 provisions of section eight of this article.

52 After the operation has been backfilled, graded and ap-
53 proved by the director, the operator shall prepare or cause to
54 be prepared a final planting plan for the planting of trees,
55 shrubs, vines, grasses or legumes upon the area of the land af-
56 fected in order to provide a suitable vegetative cover. The
57 seed or plant mixtures, quantities, method of planting, type
58 and amount of lime, fertilizer, mulch, and any other measures
59 necessary to provide a suitable vegetative cover shall be defined
60 by the rules and regulations of the commission.

61 The planting called for by the final planting plan shall be
62 carried out in a manner so as to establish a satisfactory cover
63 of trees, shrubs, grasses, legumes or vines upon the disturbed
64 area covered by the planting plan within a reasonable period
65 of time. Such planting shall be done by the operator or such
66 operator may contract in writing with the soil conservation
67 district for the district in which the operation covered by such
68 permit is located or with a private contractor approved by the
69 director to have such planting done by such district or pri-
70 vate contractor. The director shall not release the operator's
71 bond until all haulageways, roads and trails within the permit

72 area have been abandoned according to the provisions of this
73 article and the rules and regulations promulgated thereunder or
74 such operator or any other person has secured a permit to deep
75 mine such area as required by chapter twenty-two of the code
76 of West Virginia, one thousand nine hundred thirty-one, as
77 amended.

78 The purpose of this section is to require restoration of land
79 disturbed by surface mining to a desirable purpose and use.
80 The director may, in the exercise of his sound discretion when
81 not in conflict with such purpose, modify such requirements
82 to bring about a more desirable land use, including, but not
83 limited to, industrial sites, sanitary landfills, recreational areas
84 and building sites: *Provided*, That the person or agency mak-
85 ing such modifications will execute contracts, post bond or
86 otherwise ensure full compliance with the provisions of this
87 section in the event such modified program is not carried to
88 completion within a reasonable length of time.

§20-6D-11. Limitations; mandamus.

1 The Legislature finds that there are certain areas in the
2 state of West Virginia which are impossible to reclaim either
3 by natural growth or by technological activity and that if sur-
4 face mining is conducted in these certain areas such opera-
5 tions may naturally cause stream pollution, landslides, the
6 accumulation of stagnant water, flooding, the destruction of
7 land for agricultural purposes, the destruction of aesthetic
8 values, the destruction of recreational areas and future use
9 of the area and surrounding areas, thereby destroying or im-
10 pairing the health and property rights of others, and in general
11 creating hazards dangerous to life and property so as to con-
12 stitute an imminent and inordinate peril to the welfare of the
13 state, and that such areas shall not be mined by the surface-
14 mining process.

15 Therefore, authority is hereby vested in the director to de-
16 lete certain areas from all surface-mining operations.

17 No application for a permit shall be approved by the direc-
18 tor if there is found on the basis of the information set forth
19 in the application or from information available to the director
20 and made available to the applicant that the requirements of

21 this article or rules and regulations hereafter adopted will
22 not be observed or that there is not probable cause to believe
23 that the proposed method of operation, backfilling, grading or
24 reclamation of the affected area can be carried out consistent
25 with the purpose of this article.

26 If the director finds that the overburden on any part of
27 the area of land described in the application for a permit is
28 such that experience in the state of West Virginia with a simi-
29 lar type of operation upon land with similar overburden shows
30 that one or more of the following conditions cannot feasibly
31 be prevented: (1) Substantial deposition of sediment in stream
32 beds, (2) landslides or (3) acid-water pollution, the director
33 may delete such part of the land described in the application
34 upon which such overburden exists.

35 If the director finds that the operation will constitute
36 hazard to a dwelling house, public building, school, church,
37 cemetery, commercial or institutional building, public road,
38 stream, lake or other public property, then he shall delete
39 such areas from the permit application before it can be ap-
40 proved.

41 The director shall not give approval to surface mine any
42 area which is within one hundred feet of any public road,
43 stream, lake or other public property, and shall not approve the
44 application for a permit where the surface-mining operation
45 will adversely affect a state, national or interstate park unless
46 adequate screening and other measures approved by the com-
47 mission are to be utilized and the permit application so pro-
48 vides: *Provided*, That the one hundred foot restriction afore-
49 said shall not include ways used for ingress and egress to and
50 from the minerals as herein defined and the transportation of
51 the removed minerals, nor shall it apply to the dredging and
52 removal of minerals from the streams or watercourses of this
53 state.

54 Whenever the director finds that ongoing surface-mining
55 operations are causing or are likely to cause any of the con-
56 ditions set forth in the first paragraph of this section, he may
57 order immediate cessation of such operations and he shall
58 take such other action or make such changes in the permit as
59 he may deem necessary to avoid said described conditions.

60 The failure of the director to discharge the mandatory
61 duty imposed on him by this section shall be subject to a writ
62 of mandamus, in any court of competent jurisdiction by any
63 private citizen affected thereby.

**§20-6D-11a. Blasting restriction; formula; filing preplan; penalties;
notice.**

1 Where blasting of overburden or mineral is necessary, such
2 blasting shall be done in accordance with established prin-
3 ciples for preventing vibration damage to residences, buildings
4 and communities. Such blasting shall be considered in com-
5 pliance with provisions of this article if the following measures
6 are followed:

7 (1) The weight in pounds of explosive charge detonated
8 at any one time shall conform with the following scaled
9 distance formula: $W = (D/50)^2$ (to the second power). Where
10 W equals weight in pounds of explosives detonated at any
11 one instant time, then D equals distance in feet from nearest
12 point of blast to nearest residence, building, or structure,
13 other than operation facilities of the mined: *Provided*, That
14 explosive charges shall be considered to be detonated at one
15 time if their detonation occurs within eight milliseconds or
16 less of each other.

17 (2) Where blast sizes would exceed the limits under
18 subdivision (1) of this section, blasts shall be detonated by
19 the use of delay detonators (either electric or nonelectric)
20 to provide detonation times separated by nine milliseconds
21 or more for each section of the blast complying with the
22 scaled distance of the formula.

23 (3) A plan of each operation's methods for compliance
24 with this section (blast delay design) for typical blasts
25 which shall be adhered to in all blasting at each operation,
26 shall be submitted to the department of natural resources
27 with the application for a permit. It shall be accepted if
28 it meets the scaled distance formula established in subdivision
29 (1) of this section.

30 (4) Records of each blast shall be kept in a log to be
31 maintained for at least three years, which will show for each

32 blast other than secondary (boulder breaking) blasts the fol-
33 lowing information:

- 34 (a) Date and time of blast,
- 35 (b) Number of holes,
- 36 (c) Typical explosive weight per delay period,
- 37 (d) Total explosives in blast at any one time,
- 38 (e) Number of delays used,
- 39 (f) Weather conditions, and
- 40 (g) Signature of operator employee in charge of the blast.

41 (5) Where inspection by the department of natural resources
42 establishes that the scaled distance formula and the approved
43 preplan are not being adhered to, the following penalties
44 shall be imposed:

45 (a) For the first offense in any one permit year under
46 this section, the permit holder shall be assessed not less than
47 five hundred dollars nor more than one thousand dollars;

48 (b) For the second offense in any one permit year under
49 this section, the permit holder shall be assessed not less than
50 one thousand dollars nor more than five thousand dollars;

51 (c) For the third offense in any one permit year under
52 this section or for the failure to pay any assessment here-
53 inabove set forth within a reasonable time established by
54 the director, the permit shall be revoked.

55 All such assessments as set forth in this section shall be
56 assessed by the director, collected by him and deposited with
57 the treasurer of the state of West Virginia, to the credit
58 of the operating permit fees fund.

59 The director shall promulgate rules and regulations which
60 shall provide for a warning of impending blasting to the
61 owners, residents or other persons who may be present on
62 property adjacent to the blasting area.

§20-6D-12. Time in which reclamation shall be done.

1 It shall be the duty of an operator to commence the

2 reclamation of the area of land disturbed by his operation
3 after the beginning of surface mining of that area in accord-
4 ance with plans previously approved by the director and to
5 complete such reclamation within twelve months after the
6 permit has expired, except that such grading, backfilling
7 and water-management practices as are approved in the plans
8 shall be kept current with the operations as defined by rules
9 and regulations of the commission and no permit or supple-
10 ment to a permit shall be issued or renewed, if in the dis-
11 cretion of the director, these practices are not current.

§20-6D-13. Obligations of the operator.

1 In addition to the method of operation, grading, back-
2 filling and reclamation requirements of this article and rules
3 and regulations adopted pursuant thereto, the operator shall
4 be required to perform the following:

5 (1) Cover the face of the coal and the disturbed area with
6 material suitable to support vegetative cover and of such
7 thickness as may be prescribed by the director, or with a per-
8 manent water impoundment.

9 (2) Bury under adequate fill, all materials determined by
10 the director to be acid-producing materials, toxic material or
11 materials constituting a fire hazard.

12 (3) Seal off any breakthrough of acid water caused by the
13 operator: *Provided*, That any breakthrough caused by the
14 operator during the course of his operations shall be sealed
15 immediately and reported immediately to the director. If the
16 breakthrough is one that allows air to enter a mine, the seal
17 shall either prevent any air from entering the mine by way
18 of the breakthrough, or prevent any air from entering the
19 breakthrough while allowing the water to flow from the break-
20 through. If the breakthrough is one that allows acid water to
21 escape, the seal shall prevent the acid water from flowing.
22 Seals shall be constructed of stone, brick, block, earth or
23 similar impervious materials which are acid resistant. Any
24 cement or concrete employed in the construction of these
25 seals shall also be of an acid resistant, impervious type.

26 (4) Impound, drain or treat all runoff water so as to reduce

27 soil erosion, damage to agricultural lands and pollution of
28 streams and other waters.

29 In the case of storm water accumulations or any break-
30 through of water, adequate treatment shall be undertaken by
31 the operator so as to prevent pollution occurring from the
32 release of such water into the natural drainway or stream.
33 Treatment may include check-dams, settling ponds and chemi-
34 cal or physical treatment. In the case of a breakthrough of
35 water, where it is possible, the water released shall be im-
36 pounded immediately. All water so impounded shall receive
37 adequate treatment by the operator before it is released into
38 the natural drainway or stream.

39 Storm water or water which escapes, including that which
40 escapes after construction of the seals, and is polluted as de-
41 fined in this code, or as defined in the rules and regulations
42 promulgated under this code, shall be subject to the re-
43 quirements of article five-a of this chapter.

44 (5) Remove or bury all metal, lumber, equipment and other
45 refuse resulting from the operation. No operator shall throw,
46 dump or pile; or permit the throwing, dumping, piling or
47 otherwise placing of any overburden, stones, rocks, coal,
48 mineral, earth, soil, dirt, debris, trees, wood, logs or other
49 materials or substances of any kind or nature beyond or out-
50 side the area of land which is under permit and for which
51 bond has been posted; nor shall any operator place any of
52 the foregoing listed materials in such a way that normal ero-
53 sion or slides brought about by natural physical causes will
54 permit the same to go beyond or outside the area of land which
55 is under permit and for which bond has been posted.

56 The operator shall show on the map, filed with the appli-
57 cation for a permit, the percent of slope of original surface
58 within each two hundred foot interval along the contour of
59 the operation, the first measurement to be taken at the start-
60 ing point of the operation. The flagged field measurement shall
61 be made from the estimated crop line or proposed mineral
62 seam down slope to the estimated toe of the outer spoil. All
63 reasonable measures shall be taken so as not to overload
64 the fill bench during the first cut. No overburden material in

65 excess of the first cut shall be placed over the fill bench. With
66 the exception of haulageways and auger-mining operations,
67 trees and brush shall be removed from the upper one half of
68 all fill sections prior to excavation, and no trees or brush re-
69 moved from the cut section shall be placed therein or thereon.

70 No fill bench shall be produced on slopes of more than
71 sixty-five percent, except for construction of haulageways,
72 and such haulageways shall not exceed thirty-five feet in width,
73 with very scattered forty-five foot passing areas permitted.

74 Lateral drainage ditches connecting to natural or con-
75 structed waterways shall be constructed to control water run-
76 off and prevent erosion whenever required by the director.
77 There shall be no depressions that will accumulate water ex-
78 cept those the director may specify and approve. The depth
79 and width of natural drainage ditches and any other diver-
80 sion ditches may vary depending on the length and degree
81 of slope.

82 With the exception of limestone, sandstone and sand,
83 complete backfilling shall be required, not to exceed the ap-
84 proximate original contour of the land. Such backfilling shall
85 eliminate highwalls and spoil peaks. Whenever directed by
86 the director, the operator shall construct, in the final grading,
87 such diversion ditches or terraces as will control the water
88 runoff. Additional restoration work may be required by the
89 director, according to rules and regulations adopted by the
90 commission.

§20-6D-14. Cessation of operation by inspector.

1 Notwithstanding any other provisions of this article, a
2 surface-mining reclamation inspector shall have the authority
3 to order the immediate cessation of any operation where
4 (1) any of the requirements of this article or the rules and
5 regulations promulgated pursuant thereto or the orders of
6 the director or the commission have not been complied with
7 or (2) the public welfare or safety calls for the immediate
8 cessation of the operation. Such cessation of operation shall
9 continue until corrective steps have been started by the
10 operator to the satisfaction of the surface-mining reclamation
11 inspector. Any operator who believes he is aggrieved by the

12 actions of the surface-mining reclamation inspector may im-
13 mediately appeal to the director, setting forth reasons why
14 the operation should not be halted. The director shall deter-
15 mine immediately when and if the operation may continue.

§20-6D-15. Completion of planting; inspection and evaluation.

1 When the planting of an area has been completed, the
2 operator shall file or cause to be filed a planting report with
3 the director on a form to be prescribed and furnished by the
4 director, providing the following information: (1) Identifica-
5 tion of the operation; (2) the type of planting or seeding,
6 including mixtures and amounts; (3) the date of planting or
7 seeding; (4) the area of land planted; and (5) such other
8 relevant information as the director may require. All plant-
9 ing reports shall be certified by the operator, or by the party
10 with whom the operator contracted for such planting, as
11 aforesaid.

§20-6D-16. Performance bonds.

1 Each operator who shall make application for a permit
2 under section seven of this article shall, at the time such
3 permit is requested, furnish bond, on a form to be prescribed
4 and furnished by the director, payable to the state of West
5 Virginia and conditioned that the operator shall faithfully
6 perform all of the requirements of this article. The amount
7 of the bond shall be not less than six hundred dollars for
8 each acre or fraction thereof of the land to be disturbed:
9 *Provided*, That the director shall have the discretion to deter-
10 mine the amount per acre of the bond that shall be required
11 before a permit is issued, such amount to be based upon
12 the estimated reclamation costs per acre, not to exceed a
13 maximum of one thousand dollars per acre or fraction thereof.
14 The minium amount of bond furnished shall be ten thousand
15 dollars. Such bond shall be executed by the operator and
16 a corporate surety licensed to do business in the state of
17 West Virginia: *Provided, however*, That in lieu of corporate
18 surety, the operator may elect to deposit with the director
19 cash, or collateral securities or certificates as follows: Bonds
20 of the United States or its possessions, of the federal land
21 banks, or of the home owners' loan corporation; full faith

22 and credit general obligation bonds of the state of West
23 Virginia, or other states, and of any county, district or
24 municipality of the state of West Virginia or other states; or
25 certificates of deposit in a bank in this state, which certifi-
26 cates shall be in favor of the commission. The cash deposit
27 or market value of such securities or certificates shall be
28 equal to or greater than the sum of the bond. The director
29 shall, upon receipt of any such deposit of cash, securities or
30 certificates, immediately place the same with the treasurer
31 of the state of West Virginia whose duty it shall be to
32 receive and hold the same in the name of the state in trust
33 for the purpose for which such deposit is made. The opera-
34 tor making the deposit shall be entitled from time to time
35 to receive from the state treasurer, upon the written order
36 of the director, the whole or any portion of any cash,
37 securities or certificates so deposited, upon depositing with
38 him in lieu thereof, cash or other securities or certificates of
39 the classes herein specified having value equal to or greater
40 than the sum of the bond.

41 It shall be unlawful for the owner or owners of surface
42 rights or the owner or owners of mineral rights to interfere
43 with the operator in the discharge of his obligation to the
44 state for the reclamation of lands disturbed by him. If the
45 owner or owners of the surface rights or the owner or owners
46 of the mineral rights desire another operator or other opera-
47 tors to conduct mining operations on lands disturbed by
48 the operator furnishing bond hereunder, it shall be the duty
49 of said owner or owners to require the other operator or
50 operators to secure the necessary mining permit and furnish
51 suitable bond as herein provided. The director may then
52 release an equivalent amount of the bond of the operator
53 originally furnishing bond on the disturbed area.

54 The director shall not release that portion of any bond
55 filed by any operator which is designated to assure faithful
56 performance of, and compliance with, the backfilling and
57 regrading requirements of the reclamation plan until all acid-
58 bearing or acid-producing spoil within the permit area has
59 received adequate treatment as specified in section ten of
60 this article.

§20-6D-17. Exception as to highway construction projects from reclamation requirements.

1 Any provision of this article to the contrary notwithstanding,
2 ing, a person or operator shall not be subject to any duty or
3 requirement whatever with respect to reclamation requirements
4 when engaged in the removal of borrow and fill material for
5 grading in federal and state highway construction projects:
6 *Provided*, That the provisions of the highway construction
7 contract require the furnishing of a suitable bond which pro-
8 vides for reclamation wherever practicable of the area affected
9 by such recovery activity.

§20-6D-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.

1 All provisions of the mining laws of this state intended to
2 safeguard life and property shall extend to all surface-mining
3 operations insofar as such laws are applicable thereto. The
4 director of the department of mines shall promulgate reason-
5 able rules and regulations, in accordance with the provisions
6 of chapter twenty-nine-a of said code, to protect the safety of
7 those employed in and around surface mines. The enforce-
8 ment of all laws, and rules and regulations relating to the
9 safety of those employed in and around surface mines is here-
10 by vested in the department of mines and shall be enforced
11 according to the provisions of chapter twenty-two of this
12 code.

§20-6D-19. Monthly report by operator.

1 The operator of every surface mine shall, on or before the
2 end of each calendar month, file with the director of mines a
3 report covering the preceding calendar month on forms fur-
4 nished by the director. Such reports shall state the number of
5 accidents which have occurred, the number of persons em-
6 ployed, the days worked and the actual tonnage mined.

§20-6D-20. Rules and regulations.

1 The commission shall promulgate rules and regulations, in
2 accordance with the provisions of chapter twenty-nine-a of
3 said code, for the effective administration of this article.

§20-6D-21. Noncompliance.

1 If any of the requirements of this article or rules and regu-
2 lations promulgated pursuant thereto or the orders of the di-
3 rector and the commission have not been complied with within
4 the time limits set by the director or the commission or by this
5 article, the director shall cause a notice of noncompliance to
6 be served upon the operator, which notice shall order the oper-
7 ation to cease, or where found necessary, the director shall
8 order the suspension of a permit. A copy of such notice or
9 order shall be handed to the operator in person or served by
10 certified mail addressed to the operator at the permanent ad-
11 dress shown on the application for a permit. The notice of
12 noncompliance or order of suspension shall specify in what
13 respects the operator has failed to comply with this article
14 or the rules and regulations of the commission or orders of the
15 director and the commission. If the operator has not reached an
16 agreement with the director or has not complied with the re-
17 quirements set forth in the notice of noncompliance or order of
18 suspension within the time limits set therein, the permit may
19 be revoked by order of the director and the performance bond
20 shall then be forfeited. If an agreement satisfactory to the
21 director has not been reached within thirty days after sus-
22 pension of any permit, any and all suspended permits shall
23 then be declared revoked and the performance bonds with
24 respect thereto forfeited.

25 When any bond is forfeited pursuant to the provisions of
26 this article, the director shall give notice to the attorney general
27 who shall collect the forfeiture without delay.

§20-6D-22. Adjudications, findings, etc., to be by written order; contents; notice.

1 Every adjudication, determination or finding by the com-
2 mission or director affecting the rights, duties or privileges of
3 any person subject to this article shall be made by written
4 order and shall contain a written finding by the commission or
5 director of the facts upon which the adjudication, determina-
6 tion or finding is based. Notice of the making of such order
7 shall be given to the person whose rights, duties or privileges

8 are affected thereby by mailing a true copy thereof to such
9 person by certified mail.

**§20-6D-23. Appeals to board; hearing; record; findings and orders
of board.**

1 Any person claiming to be aggrieved or adversely affected
2 by any rule and regulation or order of the reclamation com-
3 mission or order of the director or by their or his failure to
4 enter an order may appeal to the reclamation board of review
5 for an order vacating or modifying such rule and regulation or
6 order, or for such order as the commission or director should
7 have entered.

8 The person so appealing to the board shall be known as the
9 appellant and the commission and/or director shall be known
10 as the appellee or appellees. The appellant and appellee or
11 appellees shall be deemed to be parties to the appeal.

12 Such appeal shall be in writing and shall set forth the rule
13 and regulation, order or omission complained of and the
14 grounds upon which the appeal is based. Where the appellant
15 claims to be aggrieved or adversely affected by an order, such
16 appeal shall be filed with the board within thirty days after
17 the date upon which the appellant received notice by certified
18 mail of the making of the order complained of. Where the
19 appellant claims to be aggrieved or adversely affected by any
20 rule and regulation or omission, such appeal may be filed with
21 the board at any time. A notice of the filing of such appeal
22 shall be filed with the commission and director within three
23 days after the appeal is filed with the board.

24 Within seven days after receipt of such notice of appeal,
25 the commission or director shall prepare and certify to the
26 board a complete record of the proceedings of the reclamation
27 commission or director out of which the appeal arises, includ-
28 ing all documents and correspondence relating to the matter.
29 The expense of preparing the record shall be taxed as a part
30 of the costs of the appeal.

31 Upon the filing of such appeal, the board shall fix the time
32 and place at which the hearing on the appeal will be held,
33 which hearing shall be held within twenty days after the notice

34 of appeal is filed, and shall give the appellant and the commis-
35 sion and director at least ten days' written notice thereof by
36 certified mail. The board may postpone or continue any hear-
37 ing upon its own motion or upon application of the appellant
38 or of the commission or director.

39 The filing of an appeal provided for in this section shall not
40 stay execution of the order appealed from.

41 The board shall hear the appeal de novo, and any party to
42 the appeal may submit evidence.

43 For the purpose of conducting a hearing on an appeal, the
44 board may require the attendance of witnesses and the produc-
45 tion of books, records and papers, and it may, and at the re-
46 quest of any party it shall, issue subpoenas for witnesses or
47 subpoenas duces tecum to compel the production of any books,
48 records or papers, directed to the sheriff of the county where
49 such witnesses, books, records or papers are found, which sub-
50 poenas and subpoenas duces tecum shall be served and re-
51 turned in the same manner as subpoenas and subpoenas duces
52 tecum in civil litigation are served and returned. The fees and
53 allowances for mileage of sheriffs and witnesses shall be the
54 same as those permitted in civil litigation in trial courts. Such
55 fees and mileage expenses incurred at the request of the ap-
56 pellant shall be paid in advance by the appellant, and the re-
57 mainder of such fees and expenses shall be paid out of funds
58 appropriated for the expenses of the division of reclamation.

59 In case of disobedience or neglect of any subpoena or sub-
60 poena duces tecum served on any person, or the refusal of any
61 witness to testify to any matter regarding which he may be law-
62 fully interrogated, the circuit court of the county in which such
63 disobedience, neglect or refusal occurs, or any judge thereof in
64 vacation, on application of the board or any member thereof,
65 shall compel obedience by attachment proceedings for con-
66 tempt as in the case of disobedience of the requirements of a
67 subpoena or subpoena duces tecum issued from such court or
68 a refusal to testify therein. Witnesses at such hearing shall
69 testify under oath, and any member of the board may adminis-
70 ter oaths or affirmations to persons who so testify.

71 At the request of any party to the appeal, a stenographic

72 record of the testimony and other evidence submitted shall be
73 taken by an official court shorthand reporter at the expense of
74 the party making the request therefor. Such record shall in-
75 clude all of the testimony and other evidence and the rulings on
76 the admissibility of evidence, but any party may at the time
77 object to the admission of any evidence and except to the rul-
78 ings of the board thereon, and if the board refuses to admit
79 evidence the party offering same may make a proffer thereof,
80 and such proffer shall be made a part of the record of such
81 hearing.

82 If upon completion of the hearing the boards finds that the
83 rule and regulation or order appealed from was lawful and
84 reasonable, it shall make a written order affirming the rule
85 and regulation or order appealed from; if the board finds that
86 such rule and regulation or order was unreasonable or unlaw-
87 ful; it shall make a written order vacating or modifying the
88 rule and regulation or order appealed from; and if the board
89 finds that the commission or director has unreasonably or un-
90 lawfully failed to enter an order, it shall enter such order as
91 it finds the commission or director should have made. Every
92 order made by the board shall contain a written finding by the
93 board of facts upon which the order is based. Notice of the
94 making of such order shall be given forthwith to each party
95 to the appeal by mailing a certified copy thereof to each such
96 party by certified mail.

97 The order of the board shall be final unless vacated upon
98 judicial review thereof.

§20-6D-24. Appeal from order of board.

1 Any party adversely affected by an order of the reclama-
2 tion board of review, other than an order affirming, modifying,
3 or vacating a rule and regulation of the commission, may
4 obtain judicial review thereof by appealing therefrom either
5 to the circuit court of Kanawha County or the circuit court
6 of the county in which the surface-mining operation to which
7 the order relates is or was conducted or is or was proposed
8 to be conducted. Any party adversely affected by an order
9 of the reclamation board of review, which order affirms,
10 modifies or vacates a rule and regulation of the commission,

11 may obtain judicial review thereof by appealing therefrom
12 either to the circuit court of Kanawha County or the circuit
13 court of the county in which the surface-mining operation
14 to which the rule and regulation in question relates is or was
15 conducted or is or was proposed to be conducted. Any
16 party desiring to so appeal shall file with the board a notice
17 of appeal designating the order appealed from and stating
18 whether the appeal is taken on questions of law, questions
19 of fact or questions of law and fact. A copy of such notice
20 shall also be filed by the appellant with the court and shall
21 be mailed or otherwise delivered to the appellee or appellees.
22 Such notice and copies thereof shall be filed and mailed or
23 otherwise delivered within thirty days after the date upon
24 which the appellant received notice from the board by certi-
25 fied mail of the making of the order appealed from. No appeal
26 bond shall be required to make an appeal on questions of law,
27 questions of fact or questions of law and fact effective.

28 The filing of a notice of appeal shall not automatically
29 operate as a suspension of the order of the board. If it
30 appears to the court that an unjust hardship to the appellant
31 will result from the execution of the board's order pending
32 determination of the appeal, the court may grant a suspension
33 of such order and fix its terms.

34 Within fifteen days after receipt of the notice of appeal,
35 the board shall prepare and file in the court the complete
36 record of the proceedings out of which the appeal arises,
37 including a transcript of the testimony and other evidence
38 which was submitted before the board. The expense of pre-
39 paring and transcribing such record shall be taxed as a part
40 of the costs of the appeal. The appellant shall provide
41 security for costs satisfactory to the court. Upon demand
42 by a party, the board shall furnish, at the cost of the party
43 requesting the same, a copy of such record. In the event such
44 complete record is not filed in the court within the time
45 provided for in this section, either party may apply to the
46 court to have the case docketed, and the court shall order
47 such record filed.

48 Appeals taken on questions of law, fact or both, shall
49 be heard upon assignment of error filed in the case or set

50 out in the briefs of the appellant. Errors not argued by
51 brief may be disregarded, but the court may consider and
52 decide errors which are not assigned or argued.

53 The hearing before the court shall be upon the record
54 made before the reclamation board of review. The court may
55 set aside any order of the reclamation board of review which
56 is clearly erroneous in view of the reliable, probative and
57 substantial evidence on the whole record, or which is deter-
58 mined by the court to involve a clearly unwarranted exercise
59 of discretion. The judgment of the court shall be final unless
60 reversed, vacated or modified on appeal to the supreme
61 court of appeals of West Virginia, and jurisdiction is hereby
62 conferred upon such court to hear and entertain such appeals
63 upon application made therefor in the manner and within
64 the time provided for civil appeals generally.

**§20-6D-25. Offenses; penalties; prosecutions; treble damages; in-
junctive relief.**

1 (a) Any person who shall conduct any surface-mining
2 operation, or any part thereof, without a permit or without
3 having furnished the required bond, or who shall carry on
4 such operation or be a party thereto on land not covered by
5 a permit, or who shall falsely represent any material fact
6 in an application for a permit or in an application for the
7 renewal of a permit, or who willfully violates any provision
8 of this article, shall be guilty of a misdemeanor, and, upon
9 conviction thereof, shall be punished by a fine of not less
10 than one hundred nor more than one thousand dollars or by
11 imprisonment not exceeding six months, or by both. Any
12 person who deliberately violates any provision of this article
13 or conducts surface-mining operations without a permit shall
14 be guilty of a misdemeanor, and, upon conviction thereof,
15 shall be punished by a fine of not less than one thousand nor
16 more than ten thousand dollars or by imprisonment not
17 exceeding six months, or by both. Each day of violation
18 constitutes a separate offense. It shall be the duty of the
19 director to institute prosecutions for violations of the pro-
20 visions hereof. Any person convicted under the provisions
21 of this section shall, in addition to any fine imposed, pay
22 to the director for deposit in the surface-mining reclamation

23 fund an amount sufficient to reclaim the area with respect
24 to which such conviction relates. The director shall institute
25 any suit or other legal action necessary for the effective
26 administration of the provisions of this article.

27 (b) In addition to and notwithstanding any other penalties
28 provided by law, any operator who directly causes damage
29 to the property of others as a result of surface mining shall
30 be liable to them, in an amount not in excess of three times
31 the provable amount of such damage, if and only if such
32 damage occurs before or within one year after such operator
33 has completed all reclamation work with respect to the land
34 on which such surface mining was carried out and all bonds
35 of such operator with respect to such reclamation work are
36 released. Such damages shall be recoverable in an action at
37 law in any court of competent jurisdiction. The director
38 shall require, in addition to any other bonds and insurance
39 required by other provisions of this article, that any person
40 engaged in the business of surface mining shall file with the
41 director a certificate of insurance, or other security in an
42 amount of not less than ten thousand dollars, to cover possible
43 damage to property for which a recovery may be sought under
44 the provisions of this subsection.

45 (c) Upon application by the director, the attorney general,
46 or the prosecuting attorney of the county in which the major
47 portion of the permit area is located, any court of competent
48 jurisdiction may by injunction compel compliance with and
49 enjoin violations of the provisions of this article. The court
50 or the judge thereof in vacation may issue a preliminary
51 injunction in any case pending a decision on the merits of
52 any application filed.

53 An application for an injunction under the provisions of
54 this section may be filed and injunctive relief granted
55 notwithstanding that all of the administrative remedies pro-
56 vided for in this article have not been pursued or invoked
57 against the person or persons against whom such relief is
58 sought and notwithstanding that the person or persons against
59 whom such relief is sought have not been prosecuted or
60 convicted under the provisions of this article.

61 The judgment of the circuit court upon any application
62 filed under the provisions of this article shall be final
63 unless reversed, vacated or modified on appeal to the supreme
64 court of appeals. Any such appeal shall be sought in the
65 manner provided by law for appeals from circuit courts in
66 other civil cases, except that the petition seeking such review
67 must be filed with said supreme court of appeals within
68 thirty days from the date of entry of the judgment of the
69 circuit court.

§20-6D-26. Validity and construction of existing surface-mining permits.

1 Any valid surface-mining permit existing on the effective
2 date of this article shall remain in full force and effect until
3 such permit expires under its terms or is otherwise terminated
4 under the provisions of this article. The provisions of this
5 section shall not be construed to require the regrading or
6 replanting of any area on which such work was satisfactorily
7 performed prior to the effective date of this article.

§20-6D-27. Certification of surface miners.

1 After the first day of July, one thousand nine hundred
2 seventy-six, certification shall be required of all surface miners
3 in accordance with the provisions of articles six and six-a,
4 chapter twenty-two of this code.

§20-6D-28. Certification of surface-mine foremen.

1 (a) In every surface mine where five or more persons are
2 employed in a period of twenty-four hours, the operator shall
3 employ at least one person certified in accordance with the
4 provisions of article six-a, chapter twenty-two of this code
5 as a mine foreman. Each applicant for certification as a mine
6 foreman shall, at the time he is issued a certificate of com-
7 petency: (1) Be a resident or employed in a mine in this
8 state; (2) have had at least three years' experience in surface
9 mining, which shall include at least eighteen months' exper-
10 ience on or at a working section of a surface mine or be a
11 graduate of the school of mines at West Virginia University
12 or of another accredited mining engineering school and have
13 had at least two years' practical experience in a surface mine,
14 which shall include at least eighteen months' experience on or

15 at a working section of a surface mine; and (3) have demon-
16 strated his knowledge of mine safety, first aid, safety appli-
17 ances, emergency procedures relative to all equipment, state
18 and federal mining laws and regulations and other subjects
19 by completing such training, education and examinations as
20 may be required of him under said article six-a.

21 (b) In surface mines in which the operations are so extensive
22 that the duties devolving upon the mine foreman cannot be
23 discharged by one man, one or more assistant mine foremen
24 may be designated. Such persons shall act under the instruc-
25 tion of the mine foreman who shall be responsible for their
26 conduct in the discharge of their duties. Each assistant so
27 designated shall be certified under the provisions of article
28 six-a, chapter twenty-two of this code. Each applicant for
29 certification as assistant mine foreman shall, at the time he is
30 issued a certificate of competency, possess all of the qualifica-
31 tions required of a mine foreman: *Provided*, That he shall,
32 at the time he is certified, be required to have at least two
33 years' experience in surface mining, which shall include
34 eighteen months on or at a working section of a surface mine
35 or be a graduate of the school of mines at West Virginia
36 University or of another accredited mining engineering school
37 and have had twelve months' practical experience in a surface
38 mine, all of which shall have been on or at a working section.

39 (c) The director shall promulgate such rules and regula-
40 tions as may be necessary to carry out the provisions of this
41 section.

CHAPTER 89

(Com. Sub. for S. B. 188—By Mr. Susman)

[Passed March 1, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-a, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to right of miner to refuse to operate unsafe equipment;

procedures; discrimination; the promulgation of rules and regulations with respect thereto; and the time limits therefor.

Be it enacted by the Legislature of West Virginia:

That section seventy-a, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. COAL MINES.

§22-2-70a. Right of miner to refuse to operate unsafe equipment; procedures; discrimination.

- 1 No miner shall be required to operate unsafe equipment.
- 2 On or before the first day of January, one thousand nine
- 3 hundred eighty-one, the board of coal mine health and
- 4 safety shall by rule or regulation establish a procedure
- 5 for resolving disputes arising out of the refusal by a miner
- 6 to operate such alleged unsafe equipment. No action shall
- 7 be taken against a miner by an operator unless such miner
- 8 is found to have acted in bad faith and without good cause
- 9 by the director or his authorized representative.

CHAPTER 90

(S. B. 187—By Mr. Suman)

[Passed February 29, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-b, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the deadline in the promulgation of rules and regulations governing long wall and short wall mining.

Be it enacted by the Legislature of West Virginia:

That section seventy-b, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. COAL MINES.

§22-2-70b. Long wall and short wall mining.

1 (a) The Legislature finds that new methods of ex-
2 tracting coal known as long wall or short wall mining
3 is being used in this state. The board of coal mine health
4 and safety shall investigate or cause to be investigated
5 the technology, procedures and techniques used in such
6 mining methods and shall promulgate by the first day
7 of January, one thousand nine hundred eighty-one, and
8 continuously update the same, rules and regulations
9 governing long wall and short wall mining, which rules
10 and regulations shall have as their paramount objective,
11 the health and safety of the persons involved in such
12 operations, and which said regulations shall include, but
13 not be limited to, the certification of personnel involved
14 in such operation.

15 (b) The director may modify the application of any
16 provision of this section to a mine if the director
17 determines that an alternative method of achieving the
18 result of such provision exists which will at all times
19 guarantee no less than the same measure of protection
20 afforded the miners of such mine by such provision, or
21 that the application of such provision to such mine will
22 result in a diminution of the health of, or safety to, the
23 miners in such mine. The director shall give notice
24 to the operator and the representative of miners in the
25 affected mine, as appropriate, and shall cause such in-
26 vestigation to be made as he deems appropriate. Such
27 investigation shall provide an opportunity for a hearing,
28 at the request of such operator or representative or other
29 interested party, to enable the operator and the repre-
30 sentative of miners in such mine or other interested
31 party to present information relating to the modification
32 of such provision. The director shall issue a decision
33 incorporating his findings of fact therein, and send a
34 copy thereof to the operator and the representative
35 of the miners, as appropriate. Any such hearing shall
36 be of record.

CHAPTER 91

(S. B. 190—By Mr. Susman)

[Passed February 29, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-c, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to promulgation of rules and regulations, by the board of coal mine health and safety, for the construction of shafts, slopes, surface facilities and attendant safety hazards at mine sites; and time limits therefor.

Be it enacted by the Legislature of West Virginia:

That section seventy-c, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. COAL MINES.

§22-2-70c. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules and regulations; time limits therefor.

1 The board of coal mine health and safety shall investi-
2 gate or cause to be investigated the technology, proce-
3 dures and techniques used in the construction of shafts,
4 slopes, surface facilities, and the safety hazards, attendant
5 therewith, and shall promulgate rules and regulations
6 governing the construction of shafts and slopes; and
7 shall promulgate by the first day of January, one
8 thousand nine hundred eighty-one, rules and regu-
9 lations governing the construction of surface facili-
10 ties.

11 The board of coal mine health and safety shall con-
12 tinuously update such rules and regulations governing
13 the construction of shafts, slopes and surface facilities,
14 which rules and regulations shall have as their paramount
15 concern, the health and safety of the persons involved in

16 such operations, and such rules and regulations shall
17 include, but not be limited to, the certification of all
18 supervisors, the certification and training of hoist opera-
19 tors and shaft workers, the certification of blasters, and
20 approval of plans. The provisions of such rules and regu-
21 lations may be enforced against operators and construc-
22 tion companies in accord with the provisions of article
23 one of this chapter. For purposes of this chapter, a
24 construction company shall be deemed an operator.

CHAPTER 92

(Com. Sub. for S. B. 102—By Mr. Harman and Mr. Susman)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the board of coal mine health and safety.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

§22-2A-4. Board powers and duties.

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) There is hereby created a board of coal mine
2 health and safety, which shall consist of seven mem-
3 bers who shall be residents of this state, six of whom
4 shall be appointed as hereinafter specified in this section:

5 (1) The governor shall appoint one member to
6 represent the viewpoint of those operators in this state
7 whose individual aggregate production exceeds one mil-
8 lion tons annually and one member to represent the
9 viewpoint of those operators in this state whose indivi-
10 dual aggregate production exceeds three hundred fifty
11 thousand tons annually but is less than one million
12 tons annually. When such members are to be appointed,
13 the governor may request from the major trade asso-
14 ciation representing operators in this state a list of
15 three nominees for each such position on the board.
16 All such nominees shall be persons with special ex-
17 perience and competence in coal mine health and
18 safety. There shall be submitted with such list a sum-
19 mary of the qualifications of each nominee. For pur-
20 poses of this subsection, the major trade association
21 representing operators in this state shall be deemed
22 to be that association which represents operators ac-
23 counting for over one half of the coal produced in
24 mines in this state in the year prior to the year in which
25 the appointment is to be made.

26 (2) The governor shall appoint one member to
27 represent the viewpoint of those operators in this state
28 whose individual aggregate production is less than three
29 hundred fifty thousand tons annually which tonnage
30 shall include tonnage produced by affiliated, parent and
31 subsidiary companies and tonnage produced by com-
32 panies which have a common director or directors, share-
33 holder or shareholders, owner or owners.

34 (3) Three members who can reasonably be expected
35 to represent the interests of the working miners in this
36 state. If the major employee organization representing
37 coal miners in this state is divided into administrative
38 districts, the employee organization of each district shall,
39 upon request by the governor, submit a list of three
40 nominees for membership on the board. If such major
41 employee organization is not so divided into admin-
42 istrative districts, such employee organization shall, upon
43 request by the governor, submit a list of twelve nomi-
44 nees for membership on the board. The governor shall

45 make such appointments from the persons so nominated:
46 *Provided*, That in the event nominations are made by
47 administrative districts, not more than one member
48 shall be appointed from the nominees of any one district
49 unless there are less than three such districts in this
50 state.

51 (4) All appointments made by the governor under
52 this section shall be with the advice and consent of the
53 Senate.

54 (b) The seventh member of the board shall be the
55 director of the department of mines who shall serve
56 as chairman of the board. The director shall furnish
57 to the board such secretarial, clerical and other ser-
58 vices as are deemed necessary to the conduct of the
59 business of the board.

60 (c) The six members of the board to be appointed
61 by the governor shall be appointed by him within
62 ninety days of the effective date of this article. As
63 soon as such members of the board are appointed,
64 the director of the department of mines shall call
65 an organizational meeting of the board. At such meet-
66 ing, the group of members appointed to represent
67 the viewpoint of operators and the group of members
68 appointed to represent the viewpoint of working miners
69 shall draw lots by group to determine the length of
70 the term the members of each group shall serve. One
71 member from each group shall serve for three years;
72 one member from each group shall serve for two
73 years; and one member from each group shall serve
74 for one year. Thereafter, members shall be nominated
75 and appointed in the manner provided in this section
76 and shall serve for a term of three years. The board
77 shall meet at least once each month, or more often as
78 may be necessary, at the call of the director or upon
79 the request of any three members of the board. The
80 director shall prepare an agenda for each board meet-
81 ing giving priority to the promulgation of rules and
82 regulations as may be required from time to time by
83 this chapter, and as may be required to improve coal

84 mine health and safety. Members of the board may
85 suggest to the director items for inclusion on the board's
86 agenda. Upon a majority vote of the quorum present
87 at any board meeting the item or items suggested shall
88 be placed on the agenda for consideration. A majority
89 of the board must approve the items to be acted upon
90 for that agenda. The director shall provide each mem-
91 ber of the board with notice of the meeting and the
92 agenda as far in advance of the meeting as practical,
93 but in any event, at least five days prior thereto. No
94 meeting of the board shall be conducted unless said
95 notice and agenda are given to the board members at
96 least five days in advance, as provided herein, except
97 in cases of emergency, as declared by the director, in
98 which event members shall be notified of the board
99 meeting and the agenda in a manner to be determined
100 by the director: *Provided*, That upon agreement of a
101 majority of the quorum present, any scheduled meet-
102 ing may be ordered recessed to another day certain
103 without further notice or additional agenda.

104 (d) Whenever a vacancy on the board occurs, nom-
105 inations and appointments shall be made in the manner
106 prescribed in this section: *Provided*, That in the case
107 of an appointment to fill a vacancy, nominations of
108 three persons for each such vacancy shall be requested
109 by and submitted to the governor within thirty days
110 after the vacancy occurs by the major trade associa-
111 tion or major employee organization, if any, which nom-
112 inated the person whose seat on the board is vacant.
113 The vacancy shall be filled by the governor within thirty
114 days of his receipt of the list of nominations.

115 (e) A quorum of the board shall be five members
116 which shall include the director, at least two members
117 representing the viewpoint of operators and at least two
118 members representing the viewpoint of working miners,
119 and the board may act officially by a majority of those
120 members who are present.

§22-2A-4. Board powers and duties.

1 (a) At the organizational meeting of the board re-

2 quired by subsection (c), section three of this article,
3 the board shall adopt as standard rules and regula-
4 tions the "coal mine health and safety provisions of
5 this chapter." Such standard rules and regulations and
6 any other rules and regulations shall be adopted by the
7 board without regard to the provisions of chapter
8 twenty-nine-a of this code. The board of coal mine
9 health and safety shall devote its time toward promul-
10 gating rules and regulations in those areas specifically
11 directed by this chapter and those necessary to prevent
12 fatal accidents and injuries.

13 (b) The board shall review such standard rules and
14 regulations and, when deemed appropriate to improve
15 or enhance coal mine health and safety, revise the
16 same or develop and promulgate new rules and regu-
17 lations dealing with coal mine health and safety.

18 (c) The board shall develop, promulgate and revise,
19 as may be appropriate, rules and regulations as are
20 necessary and proper to effectuate the purposes of article
21 two of this chapter and to prevent the circumvention
22 and evasion thereof, all without regard to the provi-
23 sions of chapter twenty-nine-a of this code:

24 (1) Upon consideration of the latest available scientific
25 data in the field, the technical feasibility of standards,
26 and experience gained under this and other safety
27 statutes, such rules and regulations may expand pro-
28 tections afforded by this chapter notwithstanding specific
29 language herein, and such rules and regulations may
30 deal with subject areas not covered by this chapter to
31 the end of affording the maximum possible protection
32 to the health and safety of miners.

33 (2) No rules or regulations promulgated by the board
34 of mines shall reduce or compromise the level of safety
35 or protection afforded miners below the level of safety
36 or protection afforded by this chapter.

37 (3) Any miner or representative of any miner, or
38 any coal operator shall have the power to petition the
39 circuit court of Kanawha County for a determination

40 as to whether any rule or regulation promulgated or
41 revised reduces the protection afforded miners below
42 that provided by this chapter, or is otherwise contrary
43 to law: *Provided, however,* That any rule or regula-
44 tion properly promulgated by the board pursuant to the
45 terms and conditions of this chapter shall create a re-
46 buttable presumption that said rule or regulation does
47 not reduce the protection afforded miners below that
48 provided by this chapter.

49 (4) The director shall cause proposed rules and regu-
50 lations and a notice thereof to be posted and in the
51 same manner as notices, orders and decisions are re-
52 quired to be posted in section seventeen of this article.
53 The director shall deliver a copy of such proposed rules
54 and regulations and accompanying notice to each opera-
55 tor affected. A copy of such proposed rules and regula-
56 tions shall be provided to any individual by the director
57 upon request. The notice of proposed rules and regula-
58 tions shall contain a summary in plain language ex-
59 plaining the effect of the proposed rules and regula-
60 tions.

61 (5) The board shall afford interested persons a period
62 of not less than thirty days after releasing proposed
63 rules and regulations to submit written data or com-
64 ments. The board may, upon the expiration of such
65 period and after consideration of all relevant matters
66 presented, promulgate such rules and regulations with
67 such modifications as it may deem appropriate.

68 (6) On or before the last day of any period fixed
69 for the submission of written data or comments under
70 subdivision (5) of this section, any interested person
71 may file with the board written objections to a pro-
72 posed rule or regulation, stating the grounds therefor
73 and requesting a public hearing on such objections.
74 As soon as practicable after the period for filing such
75 objections has expired, the board shall release a notice
76 specifying the proposed rules or regulations to which
77 objections have been filed and a hearing requested.

78 (7) Promptly after any such notice is released by
79 the board under subdivision (6) of this section, the board
80 shall issue notice of, and hold a public hearing for the
81 purpose of receiving relevant evidence. Within sixty
82 days after completion of the hearings, the board shall
83 make findings of fact which shall be public, and may
84 promulgate such rules and regulations with such modi-
85 fications as it deems appropriate. In the event the board
86 determines that a proposed rule or regulation should
87 not be promulgated or should be modified, it shall within
88 a reasonable time publish the reasons for its determina-
89 tion.

90 (8) All rules and regulations promulgated by the
91 board shall be published in the state register and shall
92 continue in effect until modified or superseded in ac-
93 cordance with the provisions of this chapter.

94 (d) To carry out its duties and responsibilities, the
95 board is authorized to employ such personnel, includ-
96 ing legal counsel, experts and consultants as it deems
97 necessary. In addition, the board, within the appropria-
98 tions provided for by the Legislature, may conduct or
99 contract for research and studies and shall be entitled
100 to the use of the services, facilities and personnel of any
101 agency, institution, school, college or university of this
102 state.

103 (e) The director shall within sixty days of a coal mining
104 fatality or fatalities provide the board with all available
105 reports regarding such fatality or fatalities.

106 The board shall review all such reports, receive any
107 additional information, and may, on its own initiative,
108 ascertain the cause or causes of such coal mining fatality
109 or fatalities. Within one hundred twenty days of such re-
110 view of each such fatality, the board shall promulgate
111 such rules and regulations as are necessary to prevent the
112 recurrence of such fatality, unless a majority of the
113 quorum present determines that no rules and regulations
114 shall assist in the prevention of the specific type of fatal-
115 ity. Likewise, the board shall annually, not later than the
116 first day of July, review the major causes of coal mining

117 injuries during the previous calendar year, reviewing the
118 causes in detail, and shall promulgate such rules and regu-
119 lations as may be necessary to prevent the recurrence of
120 such injuries.

121 Further, the board shall, on or before the tenth day of
122 January of each year, submit a report to the governor,
123 president of the Senate and speaker of the House, which
124 report shall include, but not be limited to:

125 (1) The number of fatalities during the previous
126 calendar year, the apparent reason for each fatality as
127 determined by the department of mines and the action,
128 if any, taken by the board to prevent such fatality;

129 (2) Any rules and regulations promulgated by the
130 board during the past year;

131 (3) What rules and regulations the board intends to
132 promulgate during the current calendar year;

133 (4) Any problem the board is having in its effort
134 to promulgate rules and regulations to enhance health
135 and safety in the mining industry;

136 (5) Recommendations, if any, for the enactment, re-
137 peal or amendment of any statute which would cause the
138 enhancement of health and safety in the mining industry;

139 (6) Any other information the board deems appro-
140 priate;

141 (7) In addition to the report by the board, as herein
142 contained, each individual member of said board shall
143 have the right to submit a separate report, setting forth
144 any views contrary to the report of the board, and the
145 separate report, if any, shall be appended to the report
146 of the board and be considered a part thereof.

CHAPTER 93

(S. B. 189—By Mr. Susman)

[Passed February 29, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-a,
chapter twenty-two of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to compensation and expenses of members of the board of coal mine health and safety.

Be it enacted by the Legislature of West Virginia:

That section seven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-7. Compensation and expenses of board members.

1 Each member of the board, except the director of the
2 department of mines, shall receive seventy-five dollars
3 per diem while actually engaged in the performance of
4 the duties of the board. Each such member shall be
5 reimbursed for all reasonable and necessary expenses
6 actually incurred during the performance of their duties,
7 except that in the event the expenses are paid, by a third
8 party, the members shall not be reimbursed by the state.
9 The reimbursement shall be paid out of the state treasury
10 upon a requisition upon the state auditor, properly certi-
11 fied by the director of the department of mines.

CHAPTER 94

(S. B. 469—By Mr. Benson and Mr. Steptoe)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles subject to registration and certificates of title; exemptions; implements of husbandry and farm implements towed by licensed vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter seventeen-a of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-2. Every motor vehicle, etc., subject to registration and
certificate of title provisions; exceptions.**

1 Every motor vehicle, trailer, semitrailer, and pole
2 trailer when driven or moved upon a highway shall be
3 subject to the registration and certificate of title provisions
4 of this chapter except:

5 (1) Any such vehicle driven or moved upon a highway
6 in conformance with the provisions of this chapter relat-
7 ing to manufacturers, transporters, dealers, lienholders, or
8 nonresidents or under a temporary registration permit
9 issued by the department as hereinafter authorized;

10 (2) Any implement of husbandry upon which is secure-
11 ly attached a machine for spraying fruit trees and plants
12 of the owner or lessee or for any other implement of
13 husbandry which is used exclusively for agricultural or
14 horticultural purposes on lands owned or leased by the
15 owner thereof and which is not operated on or over any
16 public highway of this state for any other purpose other
17 than for the purpose of operating it across a highway or
18 along a highway other than an expressway as designated
19 by the state road commissioner from one point of the
20 owner's land to another part thereof, irrespective of
21 whether or not the tracts adjoin: *Provided*, That the
22 distance between the points shall not exceed fifteen
23 miles, or for the purpose of taking it or other fixtures
24 thereto attached, to and from a repair shop for repairs.
25 The foregoing exemption from registration and license
26 requirements shall also apply to any vehicle hereinbefore
27 described or to any farm trailer owned by the owner or
28 lessee of the farm on which such trailer is used, when
29 such trailer is used by the owner thereof for the purpose
30 of moving farm produce and livestock from such farm
31 along a public highway for a distance not to exceed ten
32 miles to a storage house or packing plant, when such use is
33 a seasonal operation.

34 The exemptions contained in this section shall also
35 apply to farm machinery and tractors: *Provided*, That
36 such machinery and tractors may use the highways
37 in going from one tract of land to another tract of land
38 regardless of whether such land be owned by the same or
39 different persons.

40 Any vehicle exempted hereunder from the requirements
41 of annual registration certificate and license plates and
42 fees therefor shall not be permitted to use the highways
43 as above provided between sunset and sunrise.

44 Any vehicle exempted hereunder from the require-
45 ments of annual registration certificate and license plates
46 shall be permitted to use the highways as herein provided
47 whether such exempt vehicle is self-propelled, towed by
48 another exempt vehicle or towed by another vehicle for
49 which registration is required.

50 Any vehicle used as an implement of husbandry exempt
51 hereunder must have the words "farm use" affixed to both
52 sides of the implement in ten inch letters;

53 (3) Any vehicle which is propelled exclusively by
54 electric power obtained from overhead trolley wires
55 though not operated upon rails;

56 (4) Any vehicle of a type subject to registration owned
57 by the government of the United States;

58 (5) Any wrecked or disabled vehicle which is being
59 towed by a licensed wrecker or dealer on the public high-
60 ways of this state.

CHAPTER 95

(H. B. 785—By Mr. Givens and Mr. Brenda)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from

payment of motor vehicle registration fees; and exempting not more than one Class A or Class G vehicle owned by a former prisoner of war, or a recipient of the congressional medal of honor, and not used for commercial purposes.

Be it enacted by the Legislature of West Virginia:

That section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Vehicles exempt from payment of registration fees.

1 The following specified vehicles shall be exempt from the
2 payment of any registration fees:

3 (1) Any vehicle owned or operated by the United States
4 government, the state of West Virginia or any of their politi-
5 cal subdivisions. The proper representative of the United
6 States government, the state of West Virginia, or any of their
7 political subdivisions shall make an application for registration
8 for the vehicle and the registration plate or plates issued for
9 the vehicle shall be displayed as provided in this chapter;

10 (2) Any fire vehicle owned or operated by a volunteer fire
11 department organized for the protection of community prop-
12 erty;

13 (3) Any ambulance or any other emergency rescue vehicle
14 owned or operated by a nonprofit, charitable organization,
15 and used exclusively for charitable purposes;

16 (4) Any vehicle owned by a disabled veteran as defined
17 by the provisions of Public Law 663 of the 79th Congress of
18 the United States, or Public Law 187 of the 82nd Congress of
19 the United States, or Public Law 77 of the 90th Congress of
20 the United States; except for vehicles used for hire which are
21 owned by disabled veterans;

22 (5) Not more than one vehicle owned by a veteran with a
23 hundred percent total and permanent service-connected dis-
24 ability as certified by the director of the Department of Vet-
25 erans' Affairs of West Virginia and not used for commercial
26 purposes;

27 (6) Not more than one Class A or Class G vehicle, as
28 defined in section one of this article, owned by a former priso-
29 ner of war and not used for commercial purposes. For pur-
30 poses of this subdivision, the term "prisoner of war" means
31 any member of the armed forces of the United States, includ-
32 ing the United States coast guard and national guard, who was
33 held by any hostile force with which the United States was
34 actually engaged in armed conflict during any period of the
35 incarceration; or any person, military or civilian, assigned to
36 duty on the U.S.S. Pueblo who was captured by the military
37 forces of North Korea on the twenty-third of January, one
38 thousand nine hundred sixty-eight, and thereafter held prisoner;
39 except any person who, at any time, voluntarily, knowingly and
40 without duress, gave aid to or collaborated with or in any
41 manner served any such hostile force; and

42 (7) Not more than one Class A or Class G vehicle, as
43 defined in section one of this article, owned by a recipient of
44 the congressional medal of honor and not used for commer-
45 cial purposes.

CHAPTER 96

(Com. Sub. for H. B. 976—By Mr. Springston and Mr. Goodwin)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for special registration license plates and decals for certain handicapped and disabled persons in the state; giving certain stopping, standing and parking privileges to such persons; providing for certain fees and charges; giving the state commissioner of motor vehicles certain powers, duties and responsibilities with respect to the foregoing; and providing criminal penalties for certain acts made in connection with application for or use of the special plates, decals and privileges.

Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

1 (a) Any owner of a Class A motor vehicle subject to regis-
2 tration under the provisions of article three, chapter seventeen-
3 a of this code, who is a physically handicapped person with
4 limited mobility, or whose spouse or other immediate family
5 member is a physically handicapped person with limited mo-
6 bility and resides with him, may apply for a special registration
7 plate by submitting to the commissioner:

8 (1) An application therefor on a form prescribed and fur-
9 nished by the commissioner;

10 (2) A certificate issued by a person licensed to practice
11 medicine in this state stating that the applicant or the appli-
12 cant's spouse or a member of the applicant's immediate family
13 residing with him is a physically handicapped person with
14 limited mobility as defined in this section.

15 Upon receipt of the application, the physician's certi-
16 ficate and the registration fee, if he finds that the appli-
17 cant qualifies for the special registration plate provided
18 for in this subsection, the commissioner shall issue to
19 such applicant an appropriately designed and appropriate-
20 ly designated special registration plate. The special plate
21 shall be used in place of a regular license plate.

22 As used in this section, a physically handicapped per-
23 son with limited mobility is any person who suffers from
24 a permanent physical condition making it unduly diffi-
25 cult and burdensome for such person to walk.

26 Any person who falsely or fraudulently obtains or seeks to
27 obtain the special plate provided for in this subsection (a),
28 and any person who falsely certifies that a person is physically
29 handicapped with limited mobility in order that an applicant

30 may be issued the special plate, is guilty of a misdemeanor,
31 and, upon conviction thereof, in addition to any other penalty
32 he may otherwise incur, shall be fined not less than one hun-
33 dred dollars nor more than one thousand dollars, or imprison-
34 ed in the county jail not more than one year, or both fined and
35 imprisoned.

36 (b) Any physically disabled person, and any person
37 whose spouse or other immediate family member is a
38 physically disabled person and resides with him, may ap-
39 ply for a vehicle decal for a Class A vehicle by sub-
40 mitting to the commissioner:

41 (1) An application therefor on a form prescribed and fur-
42 nished by the commissioner;

43 (2) A certificate issued by a person licensed to practice
44 medicine in this state stating that the applicant or the appli-
45 cant's spouse or a member of the applicant's immediate family
46 residing with him is a physically disabled person, as defined in
47 this section, and stating the expected duration of the disability;
48 and

49 (3) A fee of one dollar.

50 Upon receipt of the application, the physician's certi-
51 ficate and the registration fee, if he finds that the appli-
52 cant qualifies for the vehicle decal provided for in this
53 subsection, the commissioner shall issue to such applicant
54 an appropriately designed decal. The decal shall be dis-
55 played on the motor vehicle in the manner prescribed by
56 the commissioner and shall be valid for such period of
57 time as the certifying physician has determined that the
58 disability will continue, which period of time, reflecting
59 the date of expiration, shall be conspicuously shown on
60 the face of the decal.

61 As used in this section "physically disabled person" means
62 any person who has sustained a temporary disability rendering
63 it unduly difficult and burdensome for him to walk.

64 Any person who falsely or fraudulently obtains or seeks to
65 obtain the vehicle decal provided for in this subsection, and any
66 person who falsely certifies that a person is physically disabled

67 in order that an applicant may be issued the vehicle decal, is
68 guilty of a misdemeanor, and, upon conviction thereof, in addi-
69 tion to any other penalty he may otherwise incur, shall be fined
70 not less than fifty nor more than one hundred dollars, or im-
71 prisoned in the county jail not more than thirty days, or both
72 fined and imprisoned.

73 (c) Free stopping, standing or parking places marked "re-
74 served for disabled persons" shall be designated in close proximi-
75 tivity to all state, county and municipal buildings and other
76 public facilities. Such places shall be reserved solely for phy-
77 sically disabled and handicapped persons during the hours that
78 such buildings are open for business.

79 Any person whose vehicle properly displays a valid special
80 registration plate or decal may park the vehicle for unlimited
81 periods of time in parking zones unrestricted as to length of
82 parking time permitted: *Provided*, That this privilege does not
83 mean that the vehicle may park in any zone where stopping,
84 standing or parking is prohibited or which creates parking zones
85 for special types of vehicles or which prohibits parking during
86 heavy traffic periods during specified rush hours or where park-
87 ing would clearly present a traffic hazard. To the extent any
88 provision of any ordinance of any political subdivision of this
89 state is contrary to the provisions of this section, the provisions
90 of this section shall take precedence and shall apply.

91 The privileges provided for in this subsection shall apply
92 only during those times when the vehicle is being used for the
93 transportation of a physically handicapped or disabled person.
94 Any person who knowingly exercises, or attempts to exercise,
95 such privileges at a time when the vehicle is not being used for
96 the transportation of a physically handicapped or disabled per-
97 son is guilty of a misdemeanor, and, upon conviction thereof,
98 in addition to any other penalty he may otherwise incur, shall
99 be fined not less than ten nor more than fifty dollars, or im-
100 prisoned in the county jail for not more than thirty days, or
101 both fined and imprisoned.

102 (d) The commissioner shall adopt and promulgate rules and
103 regulations in accordance with the provisions of chapter twenty-
104 nine-a of this code to effectuate the provisions of this section.

CHAPTER 97

(H. B. 1563—By Mrs. Wehrle and Mr. Wells)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing buses in mass transportation to be a length of up to forty feet.

Be it enacted by the Legislature of West Virginia:

That section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not exceed
2 a height of twelve feet six inches, except as provided in section
3 eleven-b of this article, and except that vehicles used as auto-
4 mobile transports including any load thereon shall not exceed
5 a height of thirteen feet six inches, but the owners of such
6 automobile transports shall be responsible to the state road
7 commissioner for any damage to bridges or other road struc-
8 tures and to municipalities and utility companies for any dam-
9 age to wires, traffic devices or other structures, and to any
10 person suffering property damage when any such damage is
11 proximately caused by the height of such vehicle or vehicles
12 and load being in excess of twelve feet six inches.

13 (b) A motor vehicle including any load thereon shall not
14 exceed a length of thirty-five feet extreme overall dimension,
15 inclusive of front and rear bumpers, except that any bus,
16 truck or trackless trolley coach equipped with three axles, any
17 school bus with two axles or any vehicle used to transport
18 passengers by an urban mass transportation authority created
19 pursuant to article twenty-seven, chapter eight of the code shall

20 not exceed an overall length, inclusive of front and rear bump-
21 ers, of forty feet.

22 (c) A combination of vehicles coupled together shall not
23 consist of more than two units and no such combination of
24 vehicles including any load thereon shall have an overall
25 length, inclusive of front and rear bumpers, in excess of fifty
26 feet, except as provided in section eleven-b of this article, and
27 except as otherwise provided in respect to the use of a pole
28 trailer as authorized in section five of this article: *Provided,*
29 That the limitation that a combination of vehicles coupled to-
30 gether shall not consist of more than two units shall not apply
31 to a combination of vehicles coupled together by a saddle
32 mount device used to transport motor vehicles in a drive-away
33 service when no more than two saddle mounts are used:
34 *Provided, however,* That equipment used in said combination
35 meets the requirements of the safety regulations of the inter-
36 state commerce commission.

CHAPTER 98

(Com. Sub. for H. B. 935—By Mrs. Spears)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two, relating to ridesharing arrangements; definition of the term "ridesharing arrangement"; providing that common carrier and workmen's compensation laws do not apply thereto, exceptions; requiring certain liability insurance coverage upon vehicles used in such arrangements; limitation on employer liability; exempting such vehicles from certain county or municipal taxes or licenses; exemptions from overtime and minimum wage laws with respect thereto; and exempting such vehicles from certain equipment, licensing and registration requirements.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-two, to read as follows:

ARTICLE 22. RIDESHARING.

§17C-22-1. Ridesharing arrangement defined.

§17C-22-2. Common carrier laws do not apply to ridesharing; requiring liability insurance.

§17C-22-3. Workmen's compensation law does not apply to ridesharing; exceptions thereto.

§17C-22-4. Liability of employer.

§17C-22-5. County or municipal licenses and taxes.

§17C-22-6. Overtime compensation and minimum wage law.

§17C-22-7. Certain ridesharing vehicles are not commercial vehicles or buses; exemption from registration; driver not chauffeur.

§17C-22-1. Ridesharing arrangement defined.

1 "Ridesharing arrangement" means the transportation of
2 persons in a motor vehicle where such transportation is in-
3 cidental to another purpose of the driver and is not for
4 profit, or is by nonprofit community organizations and non-
5 profit corporations for senior citizens or handicapped persons.
6 The term shall include, but not be limited to, ridesharing
7 arrangements known as carpools, vanpools and buspools.

**§17C-22-2. Common carrier laws do not apply to ridesharing; re-
quiring liability insurance.**

1 The following laws and regulations of this state shall not
2 apply to any ridesharing arrangement using a motor vehicle
3 with a seating capacity for not more than fifteen persons, in-
4 cluding the driver:

5 (a) Chapter twenty-four-a of this code pertaining to the
6 regulation of common carriers of any kind or description by
7 the public service commission;

8 (b) Laws and regulations containing insurance require-
9 ments that are specifically applicable to common carriers or
10 commercial vehicles: *Provided*, That with respect to any
11 private or individually owned motor vehicle designed for a

12 normal passenger capacity, including the driver thereof, of
13 no more than six persons, prior to, and continuing during the
14 term of such use, the use of any such motor vehicle for any
15 ridesharing arrangement under the provisions of this article,
16 such motor vehicle shall be insured for liability arising out
17 of the ownership, operation, maintenance or use thereof
18 in the amount of twenty thousand dollars because of bodily
19 injury to or death of one person in any one accident, and,
20 subject to said limit for one person, in the amount of forty
21 thousand dollars because of bodily injury to or death of
22 two or more persons in any one accident, and in the amount of
23 ten thousand dollars because of injury to or destruction of
24 property of others in any one accident, and in the case of any
25 other motor vehicle to be used for any ridesharing arrange-
26 ment under the provisions of this article, all such motor vehicles
27 prior to such use, and continuing during the term of such use,
28 shall be insured for liability arising out of the ownership,
29 operation, maintenance or use thereof in the amount of one
30 hundred thousand dollars because of bodily injury to or death
31 of one person in any one accident, and, subject to said limit
32 for one person, in the amount of three hundred thousand dol-
33 lars because of bodily injury to or death of two or more
34 persons in any one accident, and in the amount of twenty five
35 thousand dollars because of injury to or destruction of property
36 of others in any one accident and insured for medical pay
37 coverage of not less than ten thousand dollars.

38 (c) Laws imposing a greater standard of care on common
39 carriers or commercial vehicles than that imposed on other
40 drivers or owners of motor vehicles;

41 (d) Laws and regulations with equipment requirements and
42 special accident reporting requirements that are specifically
43 applicable to common carriers or commercial vehicles; and

44 (e) Laws imposing a tax on fuel purchased in another state
45 by a common carrier or road use taxes on commercial buses.

**§17C-22-3. Workmen's compensation law does not apply to ride-
sharing; exceptions thereto.**

1 Chapter twenty-three of this code providing compensation
2 for workers injured during the course of their employment

3 shall not apply to a person injured while participating in a
4 ridesharing arrangement between his or her place of residence
5 and place of employment or termini near such places:
6 *Provided*, That if the employer owns, leases or contracts for
7 the motor vehicle used in such arrangement, chapter twenty-
8 three shall apply.

§17C-22-4. Liability of employer.

1 (a) An employer shall not be liable for injuries to passen-
2 gers and other persons resulting from the operation or use
3 of a motor vehicle, not owned, leased or contracted for by
4 the employer, in a ridesharing arrangement.

5 (b) An employer shall not be liable for injuries to
6 passengers and other persons because he provides information,
7 incentives or otherwise encourages his employees to participate
8 in ridesharing arrangements.

§17C-22-5. County or municipal licenses and taxes.

1 No county or municipal corporation may impose a tax on,
2 or require a license for, a ridesharing arrangement using a
3 motor vehicle with a seating capacity for not more than fifteen
4 persons, including the driver.

§17C-22-6. Overtime compensation and minimum wage law.

1 The mere fact that an employee participates in any kind
2 of ridesharing arrangement shall not result in the application
3 of chapter twenty-one of this code, requiring payment of a
4 minimum wage, overtime pay or otherwise regulating the
5 hours a person may work.

§17C-22-7. Certain ridesharing vehicles are not commercial vehicles or buses; exemption from registration; driver not chauffeur.

1 (a) A motor vehicle used in a ridesharing arrangement
2 that has a seating capacity for not more than fifteen per-
3 sons, including the driver, shall not be a "bus" for purposes
4 of equipment requirements or rules of the road.

5 (b) A motor vehicle used in a ridesharing arrangement
6 that has a seating capacity for not more than fifteen

7 persons, including the driver, shall not be a "bus" or other
8 motor vehicle operated as a common carrier or contract
9 carrier under the provisions of section one, article ten, chapter
10 seventeen-a of this code relating to registration.

11 (c) The driver of a passenger car, motor vehicle that
12 has a seating capacity for not more than fifteen persons,
13 including the driver, used in a ridesharing arrangement is not
14 a "chauffeur" nor is he transporting persons for compensation
15 under the driver licensing provisions of this code.

CHAPTER 99

(H. B. 1026—By Mr. Tompkins)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-five, article fifteen of said chapter, all relating to the removal, discharge, suspension or reduction in rank or pay of members of police and fire departments; appeals; attorney fees; reduction in number of members.

Be it enacted by the Legislature of West Virginia:

That section twenty, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-five, article fifteen of said chapter be amended and reenacted, all to read as follows:

Article

14. **Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.**
15. **Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.**

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-20. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

1 (a) No member of any paid police department subject to
2 the civil service provisions of this article shall be removed,
3 discharged, suspended or reduced in rank or pay except for
4 just cause, which shall not be religious or political, except as
5 hereinbefore provided in section nineteen of this article; and
6 no such member shall be removed, discharged, suspended or
7 reduced except as provided by the civil service provisions of
8 this article, and in no event until he shall have been furnished
9 with a written statement of the reasons for such action. In
10 every case of such removal, discharge, suspension or reduction,
11 a copy of the statement of reasons therefor and of the
12 written answer thereto, if the member sought to be removed,
13 discharged, suspended or reduced desires to file such written
14 answer, shall be furnished to the policemen's civil service
15 commission and entered upon its records. If the member
16 sought to be removed, discharged, suspended or reduced shall
17 demand it, the commission shall grant him a public hearing,
18 which hearing shall be held within a period of ten days from
19 the filing of the charges in writing or the written answer
20 thereto, whichever shall last occur. At such hearing the
21 burden shall be upon the removing, discharging, suspending
22 or reducing officer, hereinafter in this section referred to
23 as "removing officer," to show just cause for his action,
24 and in the event the removing officer fails to show just
25 cause for his action before the commission, then the member
26 removed, discharged, suspended or reduced shall be reinstated
27 with full pay, forthwith and without any additional order,
28 for the entire period during which he may have been pre-
29 vented from performing his usual employment, and no charges
30 shall be officially recorded against his record. The member, if
31 reinstated or exonerated, shall, if represented by legal counsel,
32 be awarded an attorney fee of no more than two hundred fifty

33 dollars and such fee shall be determined by the commission
34 and paid by the governing body. A written record of all testi-
35 mony taken at such hearing shall be kept and preserved by the
36 commission, which record shall be sealed and not be open
37 to public inspection, if no appeal be taken from the action
38 of the commission.

39 (b) In the event that the commission shall sustain the ac-
40 tion of the removing officer, the member removed, discharged,
41 suspended or reduced shall have an immediate right of appeal
42 to the circuit court of the county wherein the city or the
43 major portion of the territory thereof is located. In the event
44 that the commission shall reinstate the member removed,
45 discharged, suspended or reduced, the removing officer shall
46 have an immediate right of appeal to said circuit court. Any
47 appeal must be taken within ninety days from the date of
48 entry by the commission of its final order; upon an appeal
49 being taken and docketed with the clerk of the circuit court
50 of said county, the circuit court shall proceed to hear the
51 appeal upon the original record made before the commission
52 and no additional proof shall be permitted to be introduced.
53 The circuit court's decision shall be final, but the member or
54 removing officer, as the case may be, against whom the
55 decision of the circuit court is rendered shall have the right
56 to petition the supreme court of appeals for a review of the
57 circuit court's decision, as in other civil cases. Such member
58 or removing officer shall also have the right, where appro-
59 priate, to seek in lieu of an appeal, a writ of mandamus. The
60 member, if reinstated or exonerated by the circuit court, shall,
61 if represented by legal counsel, be awarded an attorney fee not
62 to exceed five hundred dollars, and if reinstated or exonerated
63 by the supreme court of appeals, shall be awarded an attorney
64 fee not to exceed five hundred dollars, and such fees shall be
65 paid by the governing body: *Provided*, That the aggregate
66 amount of attorney fees awarded by the commission, the cir-
67 cuit court, and the supreme court of appeals, shall not exceed
68 one thousand dollars for any member litigant.

69 (c) The removing officer and the member sought to be re-
70 moved, discharged, suspended or reduced shall at all times,

71 both before the commission and upon appeal, be given the
72 right to employ counsel to represent them.

73 (d) If for reasons of economy or other reasons it shall
74 be deemed necessary by any Class I or Class II city to re-
75 duce the number of paid members of its paid police depart-
76 ment, said city shall follow the procedure set forth in this
77 subsection (d). The reduction in members of the said paid
78 police department of said city shall be effected by suspending
79 the last man or men, including probationers, who have been
80 appointed to said paid police department. Such removal shall
81 be accomplished by suspending the number desired in the
82 inverse order of their appointment: *Provided*, That in the
83 event the said paid police department shall again be increased
84 in numbers to the strength existing prior to such reduction
85 of members the said members suspended under the terms of
86 this subsection shall be reinstated in the inverse order of
87 their suspension before any new appointment to said paid
88 police department shall be made.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.**

**§8-15-25. Removal, discharge, suspension or reduction in rank or
pay; appeal; reduction in number of members.**

1 (a) No member of any paid fire department subject to the
2 civil service provisions of this article shall be removed, dis-
3 charged, suspended or reduced in rank or pay except for just
4 cause, which shall not be religious or political, except as here-
5 inbefore provided in section twenty-four of this article; and
6 no such member shall be removed, discharged, suspended or
7 reduced except as provided by the civil service provisions of
8 this article, and in no event until he shall have been furnished
9 with a written statement of the reasons for such action. In
10 every case of such removal, discharge, suspension or reduction,
11 a copy of the statement of reasons therefor and of the written
12 answer thereto, if the member sought to be removed, discharg-
13 ed, suspended or reduced desires to file such written answer,
14 shall be furnished to the firemen's civil service commission
15 and entered upon its records. If the member sought to be
16 removed, discharged, suspended or reduced shall demand it,

17 the commission shall grant him a public hearing, which
18 hearing shall be held within a period of ten days from the
19 filing of the charges in writing or the written answer thereto,
20 whichever shall last occur. At such hearing the burden shall
21 be upon the removing, discharging, suspending or reducing
22 officer, hereinafter in this section referred to as "removing
23 officer" to show just cause for his action, and in the event the
24 removing officer fails to show just cause for his action be-
25 fore the commission, then the member removed, discharged,
26 suspended or reduced shall be reinstated with full pay, forth-
27 with and without any additional order, for the entire period
28 during which he may have been prevented from performing his
29 usual employment, and no charges shall be officially recorded
30 against his record. The member, if reinstated or exonerated,
31 shall, if represented by legal counsel, be awarded an attorney
32 fee of no more than two hundred fifty dollars and such fee shall
33 be determined by the commission and paid by the governing
34 body. A written record of all testimony taken at such hearing
35 shall be kept and preserved by the commission, which record
36 shall be sealed and not be open to public inspection, if no ap-
37 peal be taken from the action of the commission.

38 (b) In the event that the commission shall sustain the
39 action of the removing officer the member removed, dis-
40 charged, suspended or reduced shall have an immediate right
41 of appeal to the circuit court of the county wherein the munici-
42 pality or the major portion of the territory thereof is located. In
43 the event that the commission shall reinstate the member re-
44 moved, discharged, suspended or reduced, the removing officer
45 shall have an immediate right of appeal to said circuit court.
46 Any appeal must be taken within ninety days from the date of
47 entry by the commission of its final order; upon an appeal being
48 taken and docketed with the clerk of the circuit court of said
49 county, the circuit court shall proceed to hear the appeal upon
50 the original record made before the commission and no addi-
51 tional proof shall be permitted to be introduced. The circuit
52 court's decision shall be final, but the member or removing of-
53 ficer, as the case may be, against whom the decision of the
54 circuit court is rendered shall have the right to petition the
55 supreme court of appeals for a review of the circuit court's
56 decision, as in other civil cases. Such member or removing

57 officer shall also have the right, where appropriate, to seek
58 in lieu of an appeal, a writ of mandamus. The member, if
59 reinstated or exonerated by the circuit court, shall, if repre-
60 sented by legal counsel, be awarded an attorney fee not to ex-
61 ceed five hundred dollars, and if reinstated or exonerated by
62 the supreme court of appeals, shall be awarded an attorney fee
63 not to exceed five hundred dollars, and such fees shall be paid
64 by the governing body: *Provided*, That the aggregate amount
65 of attorney fees awarded by the commission, the circuit court,
66 and the supreme court of appeals shall not exceed one thou-
67 sand dollars for any member litigant.

68 (c) The removing officer and the member sought to be
69 removed, discharged, suspended or reduced shall at all times,
70 both before the commission and upon appeal, be given the
71 right to employ counsel to represent them.

72 (d) If for reasons of economy or other reasons it shall
73 be deemed necessary by any such municipality to reduce the
74 number of paid members of its paid fire department, said
75 municipality shall follow the procedure set forth in this
76 subsection (d). The reduction in members of the said paid
77 fire department of said municipality shall be effected by
78 suspending the last man or men, including probationers, who
79 have been appointed to said paid fire department. Such
80 removal shall be accomplished by suspending the number de-
81 sired in the inverse order of their appointment: *Provided*,
82 That in the event the said paid fire department shall again
83 be increased in numbers to the strength existing prior to such
84 reduction of members the said members suspended under the
85 terms of this subsection shall be reinstated in the inverse order
86 of their suspension before any new appointment to said paid
87 fire department shall be made.

CHAPTER 100

(S. B. 256—By Mr. Brotherton, Mr. President, and Mr. Galperin)

[Passed March 5, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections sixteen and nineteen,
article twenty-two, chapter eight of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for municipalities to increase the contributions and payroll deduction, if necessary, in fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one, to maintain full retirement benefits for such fiscal year to specified maximums, to supplement municipal firemen's and policemen's pension funds.

Be it enacted by the Legislature of West Virginia:

That sections sixteen and nineteen, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

**PART III. POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND.**

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

1 In every Class I and Class II city having, or which
2 may hereafter have, a paid police department and a paid
3 fire department, or either of such departments, the gov-
4 erning body shall, and in every Class III city and Class
5 IV town or village having, or which may hereafter have,
6 a paid police department and a paid fire department, or
7 either of such departments, the governing body may,
8 by ordinance provide for the establishment and main-
9 tenance of a policemen's pension and relief fund, and for
10 a firemen's pension and relief fund, for the purposes
11 hereinafter enumerated, and, thereupon, there shall be

12 created boards of trustees which shall administer and
13 distribute the moneys authorized to be raised by this
14 section and the following sections of this article. For
15 the purposes of this section and sections seventeen
16 through twenty-eight of this article, the term "paid police
17 department" or "paid fire department" shall be taken
18 to mean only a municipal police department or municipal
19 fire department, as the case may be, maintained and
20 paid for out of public funds and whose employees are
21 paid on a full-time basis out of public funds. The term
22 shall not be taken to mean any such department whose
23 employees are paid nominal salaries or wages or are
24 only paid for services actually rendered on an hourly
25 basis.

26 Unless and until other provision is made by subsequent
27 legislative action, any policemen's pension and relief
28 fund and any firemen's pension and relief fund estab-
29 lished in accordance with the provisions of former article
30 six of this chapter or this article twenty-two shall be or
31 remain mandatory and shall be governed by the provi-
32 sions of sections sixteen through twenty-eight of this
33 article twenty-two (with like effect, in the case of a
34 Class III city or Class IV town or village, as if such Class
35 III city or Class IV town or village were a Class I or
36 Class II city), and shall not be affected by the transition
37 from one class of municipal corporation to a lower class
38 as specified in section three, article one of this chapter:
39 *Provided*, That any Class III or Class IV town or village
40 that hereafter becomes a Class I or Class II city shall
41 not be required to establish such pension and relief fund
42 if said town or village is a participant in an existing pen-
43 sion plan regarding paid firemen and/or policemen.

**§8-22-19. Levy to maintain fund; gifts, etc.; assessments on
members of departments; return of assessments.**

1 In every municipality in which there is a policemen's
2 pension and relief fund or a firemen's pension and relief
3 fund, or both, the same shall be maintained as follows:
4 The governing body of the municipality shall levy an-
5 nually and in the manner provided by law for other

6 municipal levies, and include within the maximum levy
7 or levies permitted by law, and if necessary in excess
8 of any charter provision, a tax at such rate as will, after
9 crediting (a) the amount of the contributions received
10 during such year from the members of the respective
11 paid police department or paid fire department, and (b)
12 in the case of the policemen's pension and relief fund, the
13 arrest fee of one dollar as provided for in section twenty
14 of this article, provide funds equal to the sum of (1) the
15 full amount of estimated expenditures of the boards of
16 trustees of the respective funds, and (2) an additional
17 amount equal to ten percent of such estimated expendi-
18 tures, said ten percent amount to be taken, accumulated
19 and invested, if possible, as surplus reserve: *Provided,*
20 That in no event shall such levy for each of the respec-
21 tive boards of trustees be less than one cent nor more
22 than eight cents on each one hundred dollars of all real
23 and personal property as listed for taxation in such
24 municipality: *Provided, however,* That in the event that
25 the funds derived above are not sufficient to meet the
26 annual expenditures and the surplus reserve funds for
27 fiscal year one thousand nine hundred eighty—one
28 thousand nine hundred eighty-one do not contain a
29 sufficient balance to maintain full retirement benefits
30 for the fiscal year one thousand nine hundred eighty—
31 one thousand nine hundred eighty-one, the municipality
32 shall for only the fiscal year one thousand nine hundred
33 eighty—one thousand nine hundred eighty-one levy an
34 amount not to exceed an additional two cents on each
35 one hundred dollars of all real and personal property
36 listed for taxation in such municipality: *Provided further,*
37 That in the event that a municipality is required to levy
38 an amount for the fiscal year one thousand nine hundred
39 eighty—one thousand nine hundred eighty-one in excess
40 of eight cents on each one hundred dollars of all real and
41 personal property as provided above, the municipality
42 shall assess and collect for only the fiscal year one
43 thousand nine hundred eighty—one thousand nine hun-
44 dred eighty-one from each member an additional amount
45 of one percent of the actual salary or compensation for
46 each one cent that the municipality has levied in excess

47 of the eight cents which shall become a required part
48 of the pension and relief fund to which the member
49 belongs.

50 The levies authorized under the provisions of this sec-
51 tion, or any part of them, may by the governing body
52 be laid in addition to all other municipal levies, and to
53 that extent, beyond the limit of levy imposed by the
54 charter of such municipality; and such levies shall super-
55 sede and if necessary exclude levies for other purposes
56 if such priority or exclusion is necessary under limita-
57 tions upon taxes or tax levies imposed by law.

58 Such public corporations are authorized to take by
59 gift, grant, devise or bequest, any money or real or
60 personal property, upon such terms as to the investment
61 and expenditures thereof as may be fixed by the grantor
62 or determined by said trustees.

63 In addition to all other sums provided for pensions in
64 this section, it shall be the duty of every municipality in
65 which any such fund or funds have been or shall be
66 established to assess and collect from each member of
67 the paid police department or paid fire department or
68 both each month, the sum of six percent of the actual
69 salary or compensation of such member; and the amount
70 so collected shall become a regular part of the policemen's
71 pension and relief fund, if collected from a policeman,
72 and of the firemen's pension and relief fund, if collected
73 from a fireman.

74 Any member of a paid police or fire department who
75 is removed or discharged or who before retirement on
76 any retirement pension or disability pension severs his
77 connection with said department, provided he has served
78 two full years or more, whether or not consecutive, shall,
79 upon request, be refunded all pension and relief fund
80 deductions made from his salary or compensation, but
81 without interest. In the event such refund is made and
82 such member subsequently reenters the department no
83 credit shall be allowed him for any former service,
84 unless any such member of a paid police or fire depart-
85 ment repays to the pension and relief fund all sums re-

86 funded to him within one year from the date he reenters
87 the department with interest at the rate of six percent
88 per annum: *Provided*, That any member who, on or be-
89 fore June three, one thousand nine hundred fifty-five,
90 reentered the paid police or fire department shall be
91 allowed credit for any former service in the same de-
92 partment reentered if he, within one year from said
93 June three, one thousand nine hundred fifty-five, repaid
94 all sums withdrawn or refunded to him with interest at
95 the rate of six percent per annum, but in no case shall
96 interest be charged for more than three years. Any
97 probationary member of a paid police or fire department
98 who is not given an absolute appointment at the end of
99 his probationary period shall, upon request, be refunded
100 all pension and relief fund deductions made from his
101 salary or compensation, but without interest.

CHAPTER 101

(Com. Sub. for S. B. 425—By Mr. Hanlon)

[Passed March 4, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-b; and to amend chapter twenty-seven of said code by adding thereto a new article, designated article seventeen, relating to planning and zoning for group residential facilities; definitions; permitted use; license from director of health; application; regulation; revocation of licenses.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fifty-b; and that chapter twenty-seven of said code be

amended by adding thereto a new article, designated article seventeen, to read as follows:

Chapter

- 8. **Municipal Law, Municipalities and Counties; Intergovernmental Relations.**
- 27. **Mentally Ill Persons.**

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 24. PLANNING AND ZONING.

§8-24-50b. Permitted use for group residential facility.

1 A group residential facility as defined in article seven-
2 teen, chapter twenty-seven, shall be a permitted resi-
3 dential use of property for the purposes of zoning and
4 shall be a permitted use in all zones or districts ex-
5 cept those limited to single-family or duplex-family
6 residences. No county commission, governing board
7 of a municipality, or planning commission shall re-
8 quire a group residential facility, its owner or opera-
9 tor, to obtain a conditional use permit, special use
10 permit, special exception or variance for location of such
11 facility in any zone or district except those limited to
12 single-family or duplex-family residences.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

- §27-17-1. Definitions.
- §27-17-2. Permitted use of group residential facilities; restrictions.
- §27-17-3. License from director of health; application; regulations; revocation.
- §27-17-4. Exclusion by private agreement void.

§27-17-1. Definitions.

1 "Developmental disability" means a chronic disability
2 of a person which: (1) Is attributable to a mental or
3 physical impairment or combination of mental and
4 physical impairments; (2) is likely to continue indef-
5 nitely; (3) results in substantial functional limitations in
6 self-direction, capacity for independent living, or eco-
7 nomic self-efficiency; and (4) reflects the person's need

8 for a combination and sequence of special, interdiscipli-
9 nary, or generic care, treatment, or other services which
10 are of lifelong or extended duration and are individually
11 planned and coordinated.

12 "Group residential facility" means a facility which: (1)
13 Provides residential services and supervision for individ-
14 uals who are developmentally disabled; (2) is occupied
15 as a residence by not more than eight individuals described
16 in subparagraph (1) and not more than three supervisors;
17 (3) is licensed by the department of health; and, (4) com-
18 plies with the state fire code and regulations of the state
19 fire commission for residential facilities.

**§27-17-2. Permitted use of group residential facilities; restric-
tions.**

1 A group residential facility shall be a permitted resi-
2 dential use of property for the purposes of zoning and
3 shall be a permitted use in all zones or districts except
4 those limited to single-family or duplex-family residences.
5 No county commission, governing board of a municipi-
6 pality, or planning commission shall require a group
7 residential facility, its owner or operator, to obtain a con-
8 ditional use permit, special use permit, special exception
9 or variance for location of such facility in any zone or
10 district except those limited to single-family or duplex-
11 family residences: *Provided*, That no more than one such
12 facility may be located on the same block face in any
13 municipality, or within twelve hundred feet, measured
14 from front door to front door, in any area not within a
15 municipality.

**§27-17-3. License from director of health; application; regu-
lations; revocation.**

1 No group residential facility shall be established, main-
2 tained or operated unless a license therefor shall be first
3 obtained from the director of health. The application for
4 such license shall contain such data and facts as the
5 director may require. The director may promulgate rea-
6 sonable regulations for the conduct of such facilities, shall
7 have the authority to investigate and inspect any such

8 facility, and may revoke the license of any such facility
9 for good cause after notice and hearing.

§27-17-4. Exclusion by private agreement void.

1 Any restriction, reservation, condition, exception, or
2 covenant in any subdivision plan, deed, or other instru-
3 ment of or pertaining to the transfer, sale, lease, or use of
4 property which would permit residential use of property
5 but prohibit the use of such property as a group residen-
6 tial facility shall, to the extent of such prohibition, be void
7 as against the public policy of this state and shall be given
8 no legal or equitable force or effect.

CHAPTER 102

(H. B. 983—By Mr. Springston)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections forty-three, forty-four-b and forty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class E, Class EE, Class F, Class G, Class H, Class L and Class LL licenses, and to the bear damage stamp; providing for issuance of the licenses and the stamp to residents and nonresidents, and the fees therefor; and providing for use of the licenses and stamp.

Be it enacted by the Legislature of West Virginia:

That sections forty-three, forty-four-b and forty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for non-residents and residents.

§20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund; purposes, etc.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license; Class LL nonresident statewide bow and arrow bear hunting license.

§20-4-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents and residents.

1 A Class E license shall be a nonresident hunting license
2 and shall entitle the licensee to hunt all game in all counties
3 of the state, except wild boar and bear: *Provided*, That the
4 prohibition on hunting bear under this license does not apply
5 to a Class E license issued prior to and expiring upon the
6 thirty-first day of December, one thousand nine hundred
7 eighty. It shall be issued only to citizens of the United States
8 and to unnaturalized persons who possess the permit referred
9 to in section twenty-nine of this article who are not residents
10 of this state. Until the first day of January, one thousand
11 nine hundred eighty-one, the fee therefor shall be forty
12 dollars. On and after the first day of January, one thousand
13 nine hundred eighty-one, the fee therefor shall be fifty dollars.

14 A Class EE license shall be a nonresident bear hunting
15 license and shall entitle the licensee to hunt bear in all
16 counties of the state on and after the first day of January,
17 one thousand nine hundred eighty-one. It shall be issued
18 only to citizens of the United States and to unnaturalized
19 persons who possess the permit referred to in section twenty-
20 nine of this article who are not residents of this state. The
21 fee therefor shall be one thousand dollars.

22 A Class F license shall be a nonresident fishing license and
23 shall entitle the licensee to fish for all fish in all counties of
24 the state. It shall be issued only to citizens of the United
25 States and to unnaturalized persons who possess the permit
26 referred to in section twenty-nine of this article who are not
27 residents of this state. The fee therefor shall be twenty dollars.

28 A Class G license shall be a family fishing license and
29 shall entitle the licensee and members of his family to fish
30 within the territorial limits of state parks and state forests
31 and in the waters of streams bounding same, for a distance
32 of not to exceed one hundred yards from the exterior bound-
33 ary of any state park or state forest, for a period not to

34 exceed one week. It may be issued to any adult resident or
35 nonresident who is temporarily residing in any state park or
36 forest as tenant or lessee of the state. The fee therefor shall
37 be six dollars for the head of the family, plus one dollar
38 additional for each member of his family to whom the
39 privileges of such license are extended. Class G licenses may
40 be issued in such manner and under such regulations as the
41 director may see fit to prescribe.

42 A Class H license shall be a nonresident small game hunt-
43 ing license and shall entitle the licensee to hunt small game
44 in all counties of the state for a period of six days beginning
45 with the date it is issued. It shall be issued only to citizens
46 of the United States who are not residents of this state. The
47 fee therefor shall be eight dollars. As used in this section,
48 "small game" means all game except bear, deer, wild turkey
49 and wild boar.

**§20-2-44b. Bear damage stamp; proceeds to be paid into bear
damage fund; purposes, etc.**

1 Any hunter licensed to hunt bear in this state shall in addi-
2 tion to a hunting license of either Class A, or AB, in the case
3 of a resident, or C, E, EE, L, LL or M, in the case of a
4 nonresident, have a bear damage stamp which shall be issued
5 by the department of natural resources and which shall be
6 sold at places where hunting and fishing licenses are sold.
7 The fee for a bear damage stamp shall be four dollars and
8 all proceeds from the sale of such stamps shall be paid into
9 the bear damage fund which shall be maintained by the de-
10 partment of natural resources for the purposes of paying
11 claims of property owners for damages to real and personal
12 property caused by acts of bear and to cover the expense of
13 hunting, capturing and removing offending bear to remote
14 areas.

**§20-2-46. Class L nonresident statewide bow and arrow hunting
and fishing license; Class LL nonresident statewide
bow and arrow bear hunting license.**

1 A Class L license shall be a nonresident bow and arrow
2 hunting and fishing license and shall entitle the licensee to
3 employ a long bow and arrow in taking game, fish and frogs

4 in all counties of the state: *Provided*, That no person may
 5 hunt bear under a Class L license after the thirty-first day
 6 of December, one thousand nine hundred eighty. It shall
 7 be issued only to citizens of the United States who are not
 8 residents of this state. The fee therefor shall be fifteen
 9 dollars.

10 A Class LL license shall be a nonresident bow and arrow
 11 bear hunting license and shall entitle the licensee to employ
 12 a long bow in hunting bear in all counties of the state on
 13 and after the first day of January, one thousand nine hundred
 14 eighty-one. It shall be issued only to citizens of the United
 15 States who are nonresidents of this state. The fee therefor
 16 shall be one thousand dollars.

CHAPTER 103

(H. B. 1134—By Mr. Blackwell and Mr. Brenda)

[Passed March 7, 1980; in effect January 1, 1981. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-e, relating to a Class Q hunting license permitting disabled residents of the state to hunt from a motor vehicle; authority of the director; and fee for such license.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section forty-six-e, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special resident hunting license for disabled; fee; authority of director.

1 A Class Q license shall be a special statewide hunting license

2 and shall entitle the licensee to hunt all legal species of game
3 during the designated hunting seasons.

4 Such license shall be issued only to residents of this
5 state who are permanently disabled in the lower extremities.
6 The director shall require written proof from a licensed phy-
7 sician attesting to the disability of an applicant before issuing
8 such license and shall establish such rules and regulations as
9 he deems necessary to administer the qualifications and
10 licensing of applicants.

11 A Class Q license shall entitle the holder thereof to hunt
12 from a motor vehicle and, notwithstanding the provisions of
13 subsection (10), section five of this article, to possess a
14 loaded firearm in a motor vehicle, but only under the follow-
15 ing circumstances:

16 (a) The motor vehicle is stationary;

17 (b) The engine of the motor vehicle is not operating;

18 (c) The licensee is the only occupant of the vehicle;

19 (d) The vehicle is not parked on the right-of-way of any
20 public road or highway; and

21 (e) The licensee observes all other pertinent laws and
22 regulations.

23 The fee for a Class Q license shall be the same as that
24 for a Class A resident statewide hunting and trapping license.

CHAPTER 104

(H. B. 1150—By Mrs. Neal and Mr. Shiflet)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to authorizing the director of the department of natural resources to acquire seventy-five miles of right-of-

way along the abandoned Chessie System Railroad between Caldwell and Cass; authorizing the division of parks and recreation to use such right-of-way for the development, construction, operation and maintenance of certain barriers, bicycle and hiking trails, camping and certain other facilities; and prohibiting certain motorized vehicles on such right-of-way and providing exceptions thereto and penalties; and, permitting the director of the department of natural resources hunting zones or areas.

Be it enacted by the Legislature of West Virginia:

That article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 4. PARKS AND RECREATION.

§20-4-14. Acquisition of former railroad subdivision for establishment of Greenbrier river trail; development, protection, operation and maintenance of trail.

1 (a) The director may acquire from the West Virginia rail-
2 road maintenance authority approximately seventy-five miles
3 of right-of-way along the former Greenbrier subdivision of the
4 Chessie Railroad System between Caldwell in Greenbrier Coun-
5 ty and Cass in Pocahontas County to be developed as the
6 "Greenbrier River Trail." The acquired property shall be
7 used for:

8 (1) The construction and maintenance of barriers for the
9 protection of the trail from motorized vehicular traffic and
10 for the protection of adjacent public and private property;

11 (2) The development, construction, operation and main-
12 tenance of bicycle and hiking trails, horseback trails, primitive
13 camping facilities and other compatible recreational facilities
14 to be so designated by the director.

15 (b) Except for vehicles authorized by the director for use
16 in the construction or maintenance of the trail and its facilities,
17 or for the fighting of forest fires or other recreational manage-
18 ment purposes, or any other emergency, or in the exercise of
19 vested rights of ingress, egress and regress, no person may

20 operate a motorized vehicle within the restricted area of the
21 trail. Any person who violates the provisions of this sub-
22 section is guilty of a misdemeanor, and, upon conviction there-
23 of, shall be punished in accordance with the provisions of
24 section nine, article seven of this chapter.

25 (c) The director may promulgate rules and regulations
26 establishing areas or zones where hunting may be prohibited or
27 restricted.

CHAPTER 105

(S. B. 87—By Mr. Gainer and Mr. Huffman)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section four, article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing West Virginia's membership in the interstate commission on the Potomac River basin.

Be it enacted by the Legislature of West Virginia:

That section four, article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§29-1C-4. Effective date; findings; termination date.

1 This article shall become effective upon the adoption
2 of substantially similar amendments to the interstate
3 compact by each of the signatory states to the compact,
4 and upon the approval of the amendments to the compact
5 by the Congress of the United States.

6 After having conducted a performance and fiscal audit
7 through its joint committee on government operations,
8 pursuant to section nine, article ten, chapter four of this

9 code, the Legislature hereby finds and declares that West
10 Virginia should remain a member of the interstate com-
11 pact. Accordingly, notwithstanding the provisions of sec-
12 tions four and six, article ten, chapter four of this code,
13 West Virginia shall continue to be a member of this
14 compact until the first day of July, one thousand nine
15 hundred eighty-six.

CHAPTER 106

(Com. Sub. for H. B. 1207—By Mr. Caudle and Mrs. Lane)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three-c, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three, all relating to providing immunity from civil liability for any peer review organization and for persons providing information or services to such organizations; and providing for the confidentiality of the proceedings and records of such organizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-2. Immunity from liability.

§30-3C-3. Confidentiality of review organization's records.

§30-3C-2. Immunity from liability.

- 1 (a) Notwithstanding any other provision of law, no person
- 2 providing information to any review organization shall be

3 held, by reason of having provided such information, to be
4 civilly liable under any law, unless:

5 (1) Such information is unrelated to the performance of
6 the duties and functions of such review organization, or (2)
7 such information is false and the person providing such infor-
8 mation knew, or had reason to believe, that such information
9 was false.

10 (b) A review organization or any member, agent or em-
11 ployee thereof who, in the absence of malice and gross negli-
12 gence, acts upon or furnishes counsel, services or information
13 to a review organization shall be immune from liability for
14 loss or injury to the person whose activities are being reviewed.

§30-3C-3. Confidentiality of review organization's records.

1 The proceedings and records of a review organization shall
2 be confidential and privileged and shall not be subject to sub-
3 poena or discovery proceedings or be admitted as evidence in
4 any civil action arising out of the matters which are subject to
5 evaluation and review by such organization and no person
6 who was in attendance at a meeting of such organization shall
7 be permitted or required to testify in any such civil action as
8 to any evidence or other matters produced or presented during
9 the proceedings of such organization or as to any findings,
10 recommendations, evaluations, opinions or other actions of
11 such organization or any members thereof: *Provided*, That
12 information, documents or records otherwise available from
13 original sources are not to be construed as immune from dis-
14 covery or use in any civil action merely because they were
15 presented during proceedings of such organization, nor should
16 any person who testifies before such organization or who is a
17 member of such organization be prevented from testifying as
18 to matters within his knowledge, but the witness shall not be
19 asked about his testimony before such an organization or
20 opinions formed by him as a result of said organization hear-
21 ings: *Provided, however*, That an individual may execute a
22 valid waiver authorizing the release of the contents of his file
23 pertaining to his own acts or omissions, and such waiver shall
24 remove the confidentiality and privilege of said contents other-
25 wise provided by this section: *Provided further*, That upon

26 further review by any other review organization, upon judicial
27 review of any finding or determination of a review organiza-
28 tion or in any civil action filed by an individual whose acti-
29 vities have been reviewed, any testimony, documents, proceed-
30 ings, records and other evidence adduced before any such
31 review organization shall be available to such further review
32 organization, the court and the individual whose activities
33 have been reviewed. The court shall enter such protective
34 orders as may be appropriate to provide for the confidentiality
35 of the records provided the court by a review organization and
36 all papers and records relating to the proceedings had before
37 the reviewing court.

CHAPTER 107

(S. B. 148—By Mr. Galperin and Mr. Hamilton)

[Passed February 26, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to establishing the "West Virginia Coordinate Systems"; dividing the state into two zones for the implementation of such systems; establishing certain requirements with respect to the recordation of documents purporting to utilize such systems; clarifying that purchasers and mortgagees need not rely upon descriptions utilizing said systems; and providing for the recordation of certain documents not utilizing said system.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen, to read as follows:

ARTICLE 13A. LAND SURVEYORS.**§30-13A-17. "West Virginia Coordinate Systems"; definition, plane coordinates, limitations of use.**

1 (a) The systems of plane coordinates which have been
2 established by the national ocean survey/national geo-
3 detic survey (formerly the United States Coast Geo-
4 detic Survey) or its successors for defining and stating
5 the geographic position or locations of points on the
6 surface of the earth within the state of West Virginia
7 are hereafter to be known and designated as the "West
8 Virginia Coordinate System of 1927" and the "West
9 Virginia Coordinate System of 1983."

10 For the purpose of the use of this system the state
11 is divided into a "North Zone" and a "South Zone."

12 The area now included in the following counties shall
13 constitute the North Zone: Barbour, Berkeley, Brooke,
14 Doddridge, Grant, Hampshire, Hancock, Hardy, Harri-
15 son, Jefferson, Marion, Marshall, Mineral, Monongalia,
16 Morgan, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker,
17 Tyler, Wetzel, Wirt and Wood.

18 The area now included in the following counties shall
19 constitute the South Zone: Boone, Braxton, Cabell, Cal-
20 houn, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kan-
21 awha, Lewis, Lincoln, Logan, McDowell, Mason, Mercer,
22 Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Put-
23 nam, Raleigh, Randolph, Roane, Summers, Upshur,
24 Wayne, Webster and Wyoming.

25 (b) As established for use in the North Zone, the
26 West Virginia Coordinate System of 1927 or the West
27 Virginia Coordinate System of 1983 shall be named;
28 and in any land description in which it is used it shall
29 be designated, the "West Virginia Coordinate System
30 of 1927 North Zone" or "West Virginia Coordinate Sys-
31 tem of 1983 North Zone."

32 As established for use in the South Zone, the West
33 Virginia Coordinate System of 1927 or the West Virginia
34 Coordinate System of 1983 shall be named; and in any
35 land description in which it is used it shall be designated,

36 the "West Virginia Coordinate System of 1927 South
37 Zone" or "West Virginia Coordinate System of 1983
38 South Zone."

39 (c) The plane coordinate values for a point on the
40 earth's surface, used to express the geographic position
41 or location of such point in the appropriate zone of
42 this system, shall consist of two distances, expressed in
43 U. S. survey feet and decimals of a foot when using the
44 West Virginia Coordinate System of 1927, and expressed
45 in meters and decimals when using the West Virginia
46 Coordinate System of 1983. One of these distances, to
47 be known as the "x-coordinate," shall give the posi-
48 tion in an east-and-west direction; the other, to be
49 known as the "y-coordinate," shall give the position in
50 a north-and-south direction.

51 These coordinates shall be made to depend upon and
52 conform to plane rectangular coordinate values for the
53 monumented points of the North American Horizontal
54 Geodetic Control Network as published by the National
55 Ocean Survey/National Geodetic Survey (formerly the
56 United States Coast and Geodetic Survey), or its suc-
57 cessors, and whose plane coordinates have been com-
58 puted on the system defined by this section. Any such
59 station may be used for establishing a survey connec-
60 tion to either West Virginia coordinate system.

61 (d) For purposes of describing the location of any
62 survey station or land boundary corner in the state of
63 West Virginia, it shall be considered a complete, legal,
64 and satisfactory description of such location to give the
65 position of said survey station or land boundary corner
66 on the system of plane coordinates defined in this sec-
67 tion.

68 Nothing contained in this section shall require a pur-
69 chaser or mortgagee of real property to rely wholly on
70 a land description, any part of which depends exclusive-
71 ly upon either West Virginia coordinate system.

72 (e) When any tract of land to be defined by a single
73 description extends from one into the other of the above
74 coordinate zones, the position of all points on its

75 boundaries may be referred to either of the two zones.
76 The zone which is being used specifically shall be named
77 in the description.

78 (f) (1) For purposes of more precisely defining the
79 West Virginia Coordinate System of 1927, the follow-
80 ing definition by the United States Coast and Geodetic
81 Survey (now National Ocean Survey/National Geodetic
82 Survey) is adopted:

83 The "West Virginia Coordinate System of 1927 North
84 Zone" is a Lambert conformal conic projection of the
85 Clarke Spheroid of 1866, having standard parallels at
86 north latitudes 39 degrees and 00 minutes and 40 de-
87 grees and 15 minutes, along which parallels the scale
88 shall be exact. The origin of coordinates is at the in-
89 tersection of the meridian 79 degrees 30 minutes west
90 of Greenwich and the parallel 38 degrees 30 minutes
91 north latitude. This origin is given the coordinates:
92 $x = 2,000,000$ feet and $y = 0$ feet.

93 The "West Virginia Coordinate System of 1927 South
94 Zone" is a Lambert conformal conic projection of the
95 Clarke Spheroid of 1866, having standard parallels at
96 north latitudes 37 degrees 29 minutes and 38 degrees
97 53 minutes, along which parallels the scale shall be
98 exact. The origin of coordinates is at the intersection
99 of the meridian 81 degrees 00 minutes west of Green-
100 wich and the parallel 37 degrees 00 minutes north
101 latitude. This origin is given the coordinates: $x =$
102 $2,000,000$ feet and $y = 0$ feet.

103 (2) For purposes of more precisely defining the West
104 Virginia Coordinate System of 1983, the following def-
105 inition by the National Ocean Survey/National Geo-
106 detic Survey is adopted:

107 The "West Virginia Coordinate System of 1983 North
108 Zone" is a Lambert conformal conic projection of the
109 North American Datum of 1983, having standard parallels
110 at north latitudes 39 degrees and 00 minutes and 40
111 degrees and 15 minutes, along which parallels the scale
112 shall be exact. The origin of coordinates is at the inter-

113 section of the meridian 79 degrees 30 minutes west of
114 Greenwich and the parallel 38 degrees 30 minutes north
115 latitude. This origin is given the coordinates: $x =$
116 600,000 meters and $y = 0$ meters.

117 The "West Virginia Coordinate System of 1983 South
118 Zone" is a Lambert conformal conic projection of the
119 North American Datum of 1983, having standard parallels
120 at north latitudes 37 degrees 29 minutes and 38 degrees
121 53 minutes, along which parallels the scale shall be
122 exact. The origin of coordinates is at the intersection
123 of the meridian 81 degrees 00 minutes west of Green-
124 wich and the parallel 37 degrees 00 minutes north
125 latitude. This origin is given the coordinates: $x =$
126 600,000 meters and $y = 0$ meters.

127 (g) No coordinates based on the West Virginia co-
128 ordinate system, purporting to define the position of a
129 point on a land boundary, shall be presented to be
130 recorded in any public records or deed records unless
131 such point is within one kilometer of a public or private
132 monumented horizontal control station established in
133 conformity with the standards of accuracy and specifi-
134 cations for first or second-order geodetic surveying as
135 prepared and published by the Federal Geodetic Con-
136 trol Committee (FGCC) of the United States depart-
137 ment of commerce. Standards and specifications of the
138 FGCC or its successor in force on date of said survey
139 shall apply. The publishing of the existing control sta-
140 tions, or the acceptance with intent to publish the
141 newly established control stations, by the National Ocean
142 Survey/National Geodetic Survey will constitute evi-
143 dence of adherence to the FGCC specifications. The
144 above limitations may be modified by a duly authorized
145 state agency to meet local conditions.

146 (h) The use of the term "West Virginia Coordinate
147 System of 1927 North or South Zone" or "West Vir-
148 ginia Coordinate System of 1983 North or South Zone"
149 on any map, report of survey or other document shall
150 be limited to coordinates based on the West Virginia
151 coordinate system as defined in this section.

152 (i) Nothing in this section shall prevent the recor-
153 dation in any public record of any deed, map, plat, sur-
154 vey, description or of any other document or writing of
155 whatsoever nature which would otherwise constitute a
156 recordable instrument or document even though the same
157 is not based upon or done in conformity with the West
158 Virginia coordinate system established by this section,
159 nor shall such nonconformity with such system invalidate
160 any deed, map, plat, survey, description or other docu-
161 ment which is otherwise proper.

CHAPTER 108

(S. B. 192—By Mr. Kusic and Mr. Galperin)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the time for exemptions of certain applicants from licensing requirements for radiologic technologists in the state.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

- 1 (a) To be eligible for a license to practice radiologic
- 2 technology the applicant must:
 - 3 (1) Be of good moral character;
 - 4 (2) Have completed four years of high school edu-
 - 5 cation or its equivalent;

6 (3) Have successfully completed a minimum twenty-
7 four-month course in radiologic study in a school of
8 radiologic technology approved by the board;

9 (4) Have passed the examination prescribed by the
10 board, which examination shall cover the basic subject
11 matter of radiologic technology, skills and techniques;
12 and

13 (5) Not have been convicted of a felony in any court
14 in this state or any federal court in this or any other
15 state within ten years preceding the date of application
16 for registration, which conviction remains unreversed;
17 and not have been convicted of a felony in any court
18 in this state or any federal court in this or any other
19 state at any time if the offense for which he was con-
20 victed related to the practice of radiologic technology,
21 which conviction remains unreversed.

22 (b) Any person who holds a license or certificate,
23 including the American Registry of Radiologic Tech-
24 nologists, to practice radiologic technology issued by any
25 other state, the requirements for which license or certifi-
26 cate are found by the board to be at least equal to those
27 provided in this article, shall be eligible for a license
28 to practice radiologic technology in this state without
29 examination.

30 (c) The following persons are not required to obtain
31 a license in accordance with the provisions of this article:

32 (1) A technology student enrolled in or attending an
33 approved school of technology who as part of his course
34 of study applies ionizing radiation to a human being
35 under the supervision of a licensed practitioner;

36 (2) A person acting as a dental assistant who under
37 the supervision of a licensed dentist operates only radio-
38 graphic dental equipment for the sole purpose of dental
39 radiography;

40 (3) A person engaged in performing the duties of
41 a technologist in his employment by an agency, bureau
42 or division of the government of the United States; and

43 (4) Any licensed practitioner, radiologist or radiology
44 resident.

45 (d) Any person who has engaged in the practice of
46 radiologic technology in this state for a period of three
47 years or more within the last five-year period immedi-
48 ately prior to the seventh day of July, one thousand
49 nine hundred seventy-seven, is eligible for a license to
50 engage in the practice of radiologic technology without
51 examination and without meeting the requirements of
52 subdivision (3), subsection (a) of this section, if appli-
53 cation for such license is made by the first day of July,
54 one thousand nine hundred eighty, and if such person
55 meets the requirements of subdivisions (1), (2) and (5),
56 subsection (a) of this section.

57 (e) Any person who has been engaged as a radiologic
58 technologist for at least one of the three years immedi-
59 ately prior to the seventh day of July, one thousand nine
60 hundred seventy-seven, and passes a proficiency exami-
61 nation prepared by the board is eligible for a license
62 to engage in the practice of radiologic technology without
63 further examination and without meeting the require-
64 ments of subdivision (3), subsection (a) of this section,
65 if application for such license is made by the first day
66 of July, one thousand nine hundred eighty and if such
67 person meets the requirements of subdivisions (1), (2)
68 and (5), subsection (a) of this section.

69 (f) Any applicant for any such license shall submit
70 an application therefor at such time (subject to the time
71 limitation set forth in subsection (d) of this section), in
72 such manner, on such forms and containing such infor-
73 mation as the board may from time to time by reasonable
74 rule and regulation prescribe, and pay to the board a
75 license fee of thirty dollars, which fee shall be returned
76 to the applicant if he is denied a license.

CHAPTER 109

(S. B. 37—By Miss Herndon)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact sections one, two, three, four, six, seven, eight, nine, ten and eleven, article twenty-

seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting employees and individuals with a pecuniary interest in schools of barbering and beauty culture from appointment to the board of barbers and beauticians; increasing the salaries of the board members; giving the board the power to promulgate concurrent rules and regulations; requiring promulgation of rules in certain areas; providing for resolution of conflicts in rules; providing for revocation of license for violation of regulations; increasing examination fees; abolishing licensing for junior barbers or beauticians and removing all references thereto; increasing fees for licenses; mandating that rules and regulations be promulgated to establish a joint barber-beautician license; increasing license renewal fees and late penalties; increasing license fees for schools of barbering and beauty culture and instructors; providing minimum qualifications for instructors; and making violation of board's regulations grounds for refusal to license.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six, seven, eight, nine, ten and eleven, article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

- §30-27-1. Board of barbers and beauticians; appointment; qualifications and terms of board members; compensation and expenses of members; powers and duties of board.
- §30-27-2. Revocation of license for violation.
- §30-27-3. Qualifications of applicants; fees; examinations; licensure.
- §30-27-4. Renewal of license; fee; penalty for late renewal; withdrawal from active practice.
- §30-27-6. Display of license.
- §30-27-7. Shop to be managed by licensed barbers and beauticians; restrictions as to other businesses; signs; advertising of prices prohibited.
- §30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fees; administrative procedures.
- §30-27-9. Health certificate and photograph required.

§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

§30-27-11. Grounds for cancellation or refusal to issue or renew license.

§30-27-1. Board of barbers and beauticians; appointment; qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

1 (a) The board of barbers and beauticians heretofore
2 established is continued and all members of the com-
3 mittee, serving for a term which has not expired on the
4 effective date of this article, shall continue to serve the
5 terms for which they were appointed. The board shall
6 promulgate rules and regulations pertaining to the
7 licensure and qualifications of barbers, beauticians and
8 manicurists, and curricula and standards of instruction
9 for schools of barbering and beauty culture. The board
10 shall aid and assist in the enforcement of all rules and
11 regulations in accordance with section one, article four-
12 teen, chapter sixteen of this code. The board shall consist
13 of four professional members to be appointed by the
14 governor, by and with the advice and consent of the
15 Senate, and one lay member to be appointed in accordance
16 with the provisions of section four-a, article one of this
17 chapter. Of the four professional members, one shall be
18 an employing barber, one an employee barber, one an
19 employing beautician and one an employee beautician.
20 Each professional member of the board shall have been
21 engaged within this state in the practice of barbering
22 or beauty culture, as the case may be, for a period of
23 five years prior to his appointment, and no more than
24 two of the four professional members may belong to
25 the same political party. No member of the board shall
26 own or have a pecuniary interest in a barber or beautician
27 school licensed by or doing business within this state
28 or shall be employed by such an institution.

29 (b) On or before the thirtieth day of June of each
30 year the governor shall appoint one member of the board
31 to serve for a term of four years, to begin on the first
32 day of July. No professional member of the board may
33 serve for more than two complete terms.

34 (c) The board shall designate one of its members as
35 chairperson.

36 (d) Each member of the board shall receive as
37 compensation a per diem of fifty dollars for each day
38 of attendance at board sessions, but such compensation
39 for each member shall not exceed the sum of two
40 thousand dollars in any calendar year. Each member
41 shall be reimbursed for actual and necessary expenses
42 incurred in the performance of their duties, upon
43 presentation of an itemized sworn statement thereof.

44 (e) The board shall examine all applicants for
45 licensure and shall issue licenses to those entitled thereto
46 and collect examination and licensure fees, in accordance
47 with regulations promulgated by the board of health
48 pursuant to article fourteen, chapter sixteen of this code
49 or the board of barbers and beauticians.

50 (f) It shall be unlawful for any person to practice
51 or offer to practice barbering, beauty culture or mani-
52 curing in this state without first obtaining a license
53 for such purposes from the board of barbers and
54 beauticians.

55 (g) The board shall have the power to promulgate
56 rules and regulations generally regarding the practice
57 and conduct of barbering and beauty culture, including,
58 but not limited to, the procedures, criteria and curricula
59 for examination and qualifications of applicants for
60 licensure, and for the licensing of instructional person-
61 nel for schools of barbering and beauty culture.

62 The power of the board to promulgate such rules and
63 regulations shall be concurrent with that of the board
64 of health as authorized in article fourteen, chapter six-
65 teen of this code: *Provided*, That in the case of conflicting
66 provisions regarding requirements for health and sanita-
67 tion, the rule or regulation of the board of health shall
68 be deemed to apply. The board of health and the board
69 of barbers and beauticians shall for a reasonable fee
70 make available upon request to any licensee a copy of
71 such rules and regulations.

§30-27-2. Revocation of license for violation.

1 For violation of any regulation authorized by the terms
2 of this article or promulgated by the board of health, the
3 board of barbers and beauticians may cancel and revoke
4 the license issued such violator, and may refuse to renew
5 or reissue the same.

§30-27-3. Qualifications of applicants; fees; examinations; licensure.

1 An applicant for licensure as a barber, beautician or
2 manicurist shall present satisfactory evidence that he or
3 she is at least eighteen years of age, of good moral charac-
4 ter and temperate habits, has completed at least the
5 eighth grade of school, or the equivalent thereof, and
6 has been graduated from a school of barbering or beauty
7 culture approved by the state board of barbers and beau-
8 ticians, or in the case of a manicurist has successfully
9 completed an approved course in manicuring in such a
10 school, and shall transmit with his application an exami-
11 nation fee of twenty-five dollars. The examination shall
12 be of such character as to determine the qualifications
13 and fitness of the applicant to practice barbering, beauty
14 culture or manicuring as defined by this article, and shall
15 cover such subjects germane to the inquiry as the board
16 may deem proper. If an applicant for licensure as a barber
17 or beautician successfully passes such examination and
18 presents a certificate of health from a licensed physician
19 and is otherwise qualified as required by this section, the
20 board shall license the applicant as a duly qualified bar-
21 ber or beautician. Any applicant for license as a manicur-
22 ist may be licensed as a duly qualified manicurist after he
23 has passed the examination. The board shall charge
24 twenty-five dollars for the issuance of a license.

25 The state board of barbers and beauticians shall prom-
26 ulgate rules and regulations to establish a joint barber-
27 beautician license.

28 Any person who meets the requirements of this section
29 as to age, character and health, who is a graduate of a
30 recognized school of barbering or beauty culture in

31 another state, or has successfully completed an approved
32 course in manicuring in such a school, and who holds a
33 current license as a registered barber, beautician or mani-
34 curist in another state, may file with the board an appli-
35 cation for licensure without examination, together with
36 a fee of fifty dollars. If in the opinion of the board such
37 applicant has had a prescribed course of instruction in
38 barbering, beauty culture or manicuring equivalent to
39 that required in this state at the time such course was
40 completed, or is otherwise properly qualified, the board
41 may without examination issue to such applicant a license
42 as a duly qualified barber, beautician or manicurist.

**§30-27-4. Renewal of license; fee; penalty for late renewal;
withdrawal from active practice.**

1 Every licensed barber, beautician or manicurist who
2 desires to continue in active practice or service shall,
3 annually upon or before the first day of January, renew
4 his license and pay an annual renewal fee of twenty-five
5 dollars. For any renewal which is more than thirty
6 days late, a penalty of five dollars shall be added to
7 the regular renewal fee, and an additional five dollar
8 penalty for each successive thirty-day period said re-
9 newal fee is late. Every licensed barber, beautician or
10 manicurist who does not desire to continue in active
11 practice, shall notify the board in writing, and shall,
12 during such period, be listed by the board as being
13 inactive, and shall not be required to renew his license
14 until such time as he shall again become active, and
15 during such inactive period he or she shall not be liable
16 for any renewal fees.

§30-27-6. Display of license.

1 Every person practicing barbering, beauty culture or
2 manicuring and every student shall display his license or
3 renewal thereof in a conspicuous place in the shop where-
4 in he practices or is employed and whenever required
5 shall exhibit such license to the state board of barbers
6 and beauticians or its authorized representative.

§30-27-7. Shop to be managed by licensed barbers and beauticians; restrictions as to other businesses; signs; advertising of prices prohibited.

1 Every barber or beauty shop in this state shall be
2 operated under the supervision and management of a
3 barber or beautician who is licensed as such in this state.
4 No business or trade other than that of barbering shall
5 be conducted in a barbershop and no business or trade
6 other than beauty culture shall be conducted in a beauty
7 shop, except the display or sale, or both, of commodities
8 or other articles used in connection with barbering or
9 beauty culture, and no such barber or beauty shop shall
10 be operated in a store, dwelling house, or other building
11 or space used for any purpose other than barbering or
12 beauty culture unless such barber or beauty shop is
13 separated by stationary partitions extended from floor to
14 ceiling: *Provided*, That nothing in this article shall be
15 construed as prohibiting a barbershop from carrying on
16 the business of shoe shining or manicuring or both shoe
17 shining and manicuring. A suitable sign shall be dis-
18 played at the main entrance of all barber and beauty
19 shops, plainly indicating the business conducted therein:
20 *Provided, however*, That no sign shall be displayed out-
21 side any barber or beauty shop or inside the same, so as
22 to be clearly visible from the outside and for the osten-
23 sible purpose of attracting trade, which in any way ad-
24 vertises the prices to be charged in such barber or beauty
25 shop for services to be therein performed.

§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fees; administrative procedures.

1 No person, firm or corporation, whether public or pri-
2 vate, and whether organized for profit or not, shall own
3 or operate a school of barbering or beauty culture in this
4 state without first obtaining a license so to do from the
5 board. The application for such license shall be made in

6 writing on forms prescribed and furnished by the board
7 and shall be signed and verified by the applicant. The
8 applicant shall, in addition to such other information as
9 may be reasonably required by the board, furnish evi-
10 dence that (a) the applicant is professionally competent
11 and financially responsible, (b) adequate physical facili-
12 ties will be available for the school, and (c) persons
13 teaching or instructing therein are licensed by the board
14 as fully qualified instructors. If an applicant desires to
15 own or operate more than one school of barbering or
16 beauty culture, a separate application shall be made and
17 a separate license shall be issued for each.

18 All applicants for a license to own or operate a school
19 of barbering or beauty culture shall permit an inspection
20 of such proposed school by the inspectors appointed pur-
21 suant to subsection (d), section one, article fourteen,
22 chapter sixteen of this code to determine whether it is
23 properly fitted and equipped for instruction in barbering
24 or beauty culture. The board of health shall promulgate
25 reasonable rules and regulations to implement and make
26 effective the powers, duties and responsibilities vested in
27 such board in connection with the licensing of schools
28 of barbering and beauty culture. If the applicant has met
29 all of the standards and qualifications prescribed herein
30 by the board of health and has complied with the rules
31 and regulations pertaining to the issuance of the license
32 applied for, the board shall issue such license to the
33 applicant. Thereafter, the board may suspend, revoke or
34 refuse to renew the license of a school whenever it fails
35 to meet the minimum standards and qualifications re-
36 quired for the issuance of an original license. The director
37 of health or his designees shall administer and enforce
38 such actions of the board.

39 The initial license fee for each school of barbering and
40 for each school of beauty culture shall be five hundred
41 dollars and the annual renewal fee shall be two hundred
42 fifty dollars, to be paid in such manner as the board may
43 prescribe, on or before January first of each year. The
44 license shall be permanently displayed in the school, and
45 a suitable sign shall be kept on the front of the school

46 which shall plainly indicate that a school of barbering or
47 beauty culture is operated therein.

48 The board of barbers and beauticians shall promulgate
49 reasonable rules and regulations prescribing the stan-
50 dards and requirements to be met by applicants
51 for licensure of duly qualified instructors in schools
52 of barbering or beauty culture. Such rules and regu-
53 lations may provide for the issuance of certificates
54 for instructors, including temporary certificates, and
55 shall prescribe minimum qualifications as to age, educa-
56 tion and training for applicants for such certificates. Min-
57 imum qualifications to become applicants as student
58 instructors shall include one year's experience as a
59 licensed full-time practicing barber or beautician and two
60 hundred fifty hours of advanced instruction beyond the
61 normal licensure requirements. Each licensed instructor
62 in barbering and beauty culture shall pay an initial
63 registration fee of fifty dollars, and shall renew his cer-
64 tificate annually and pay a renewal fee of fifty dollars
65 on or before the first day of January of each year. An
66 expired certificate may be reinstated only upon the pay-
67 ment of all lapsed renewal fees, unless such instructor
68 shall have notified the board that he or she desires to be
69 placed on an inactive status during which time he or she
70 shall not be liable for any renewal fees. The applicant for
71 reinstatement shall also be required to meet the qualifi-
72 cations for registration in effect at the time application
73 for reinstatement is made.

74 Recognizing that all of the provisions of chapter
75 twenty-nine-a of this code are fully applicable to any
76 and all administrative procedures, and the right of judi-
77 cial review, in connection with the provisions of this
78 article, but also recognizing that the question has been
79 raised as to whether rules and regulations adopted under
80 the provisions of this section must be promulgated in
81 accordance with the provisions of said chapter twenty-
82 nine-a, it is hereby expressly provided that all such rules
83 and regulations shall be promulgated in compliance with
84 the provisions of said chapter twenty-nine-a.

§30-27-9. Health certificate and photograph required.

1 No person shall practice barbering, beauty culture or
2 manicuring, or serve as a student in this state while
3 having an infectious, contagious or communicable disease.
4 No person shall be licensed as a barber, beautician, mani-
5 curist or student until he or she shall have obtained a
6 certificate of health from a licensed physician under
7 article three of this chapter certifying such person to be
8 free of all infectious, contagious and communicable dis-
9 eases. Such certificate shall be filed with the state board
10 of barbers and beauticians within ten days after the ex-
11 amination of the person is made by the physician and a
12 photograph of the applicant must accompany the appli-
13 cation with such certificate. The certificate shall be in
14 such form as the board may prescribe. The board shall be
15 empowered to compel any registered barber, beautician,
16 manicurist or student to submit to a physical examina-
17 tion and file a certificate of health at any reasonable time.

§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

1 It shall be unlawful for any person, firm or corporation
2 to own or operate a beauty shop or barbershop, or a
3 school of beauty culture or barbering, or to act as a
4 barber, beautician or manicurist, unless:

5 (a) Such beauty shop, barbershop, or school of beauty
6 culture or barbering shall before opening its place of
7 business to the public, have been approved by the board
8 as having met all the requirements and qualifications for
9 such places of business as are required by this article and
10 for this purpose. It shall be the duty of the owner or
11 operator of each such beauty shop, barbershop, or school
12 of beauty culture or barbering to notify the board, in
13 writing, at least ten days before the proposed opening
14 date of such shop or school, whereupon it shall become
15 the duty of the board, through the inspectors herein
16 provided for, to inspect such shop or school. Upon giving
17 notice of the opening of any such shop or school, the
18 owner or operator thereof shall pay to the board an
19 inspection fee of twenty-five dollars. In the event the shop

20 or school fails to meet the requirements of this article,
21 and is not approved, the inspection fee shall be returned
22 to the person paying same. Any shop or school meeting
23 the prescribed requirements shall be granted a license
24 permitting it to do business as such. If, however, after the
25 lapse of ten days after the giving of such notice of open-
26 ing to the board, an inspection is not made or such cer-
27 tificate of opening has not been granted or refused, the
28 owner or operator of such shop or school may open
29 provisionally subject to later inspection and to all other
30 provisions, rules and regulations provided for in this
31 article;

32 (b) All such shops and schools, and bathrooms, toilets
33 and adjoining rooms used in connection therewith, are
34 kept clean, sanitary, well lighted and ventilated at all
35 times. The use of chunk alum, powder puffs and styptic
36 pencils in any such shop is prohibited;

37 (c) Each barber, beautician, manicurist, instructor and
38 student shall thoroughly cleanse his or her hands with
39 soap and water immediately before serving any patron;

40 (d) Each patron is served with clean, freshly laun-
41 dered linen which is kept in a closed cabinet used for
42 that purpose alone. All linens, immediately after being
43 used, shall be placed in a receptacle used for that purpose
44 alone.

45 The board of health shall prescribe such other rules
46 and regulations in regard to sanitation and cleanliness in
47 such shops and schools as it may deem proper and nec-
48 essary. The director of health or inspectors designated
49 pursuant to subsection (d), section one, article four-
50 teen, chapter sixteen of the code shall have the power
51 to enforce compliance therewith. Such rules and regula-
52 tions shall be kept posted in a conspicuous place in each
53 shop or school.

**§30-27-11. Grounds for cancellation or refusal to issue or renew
license.**

1 The board may refuse to issue a license of registration
2 to any applicant, or may refuse to renew, or may suspend

3 or revoke the same for any holder thereof, for any of
4 the following causes: (1) Conviction of the commission
5 of a felony, as shown by a certified copy of the record
6 of the court of conviction; (2) obtaining or attempting
7 to obtain a license to practice barbering or beauty cul-
8 ture in this state by false pretenses, fraudulent mis-
9 representation, or bribery by the use of money or other
10 considerations; (3) gross incompetency; (4) the con-
11 tinued practice of barbering or beauty culture by a per-
12 son knowing himself or herself to be afflicted with a
13 contagious or infectious disease; (5) the use knowingly
14 of any false or deceptive statements in advertising; (6)
15 habitual drunkenness or habitual addiction to the use
16 of morphine, cocaine or other habit-forming drugs; (7)
17 conviction for the illegal sale of any intoxicating beverage,
18 as shown by a certified copy of the record of the court
19 of conviction; (8) violation of any of the rules and regu-
20 lations prescribed by the board of health; (9) violation
21 of any of the rules and regulations prescribed by the
22 board of barbers and beauticians.

CHAPTER 110

(Com. Sub. for H. B. 904—By Mrs. Spears and Mrs. Neal)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections seventeen, eighteen and thirty-one-a, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article ten, by adding thereto a new section, designated section twenty-two-b, all relating to the public employees retirement act; permitting retired members of the department of public safety or retired municipal policemen or firemen thereafter becoming members of the state public employees retirement system to receive service credit therein for time subsequently employed, if no duplication of a service credit year granted by the prior retirement system, and requiring pay-

ment of employer and employee contribution for certain periods; providing for reentry of a former member of the public employees retirement system after the elapse of more than five years subsequent to prior employment therein and qualifications and eligibility therefor; providing a supplemental benefit for certain annuitants receiving less than a specified annual annuity, contingent on legislative budgetary action, specifying factors for eligibility and computation thereof; extending the time period for election of participation in public employees retirement system to defined eligible participating public employers through retroactive contributions for acquirement of service credit years for current employees for such prior periods; and new election of participation to expire after specified period.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

§5-10-18. Termination of membership.

§5-10-22b. Supplemental benefits for certain annuitants.

§5-10-31a. Retroactive contributions to the retirement system.

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall consist of
2 the following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public em-
6 ployer and who continue in the employ of the said participa-
7 ting public employer on and after the said date shall become
8 members of the retirement system; and all persons who be-
9 come employees of a participating public employer on or
10 after the said date shall thereupon become members of the

11 system; except as provided in subdivisions (b) and (c) of this
12 section.

13 (b) The membership of the retirement system shall not
14 include any person who is a member of, or who has been
15 retired by, the state teachers' retirement system, the judges'
16 retirement system, the retirement system of the department
17 of public safety, or any municipal retirement system for
18 either, or both, policemen or firemen; and the West Virginia
19 department of employment security, by the commissioner of
20 such department, may elect whether its employees will accept
21 coverage under this article or be covered under the authoriza-
22 tion of a separate enactment: *Provided*, That such exclusions
23 of membership shall not apply to any member of the state
24 Legislature, the clerk of the House of Delegates, the clerk
25 of the state Senate or to any member of the legislative body
26 of any political subdivision provided he once becomes a
27 contributing member of the retirement system: *Provided*,
28 *however*, That any retired member of the retirement system
29 of the department of the public safety, and any retired
30 member of any municipal retirement system for either, or
31 both, policemen or firemen may on and after the effective
32 date of this section become a member of the retirement
33 system as provided in this article, without receiving credit
34 for prior service as a municipal policeman or fireman or as
35 a member of the department of public safety: *Provided further*,
36 That service credit shall be given to any such retired member
37 of the retirement system of the department of public safety
38 and any such retired member of any municipal retirement
39 system for either, or both, policemen or firemen for all the
40 time such member actually performed service for a participat-
41 ing public employer, whether before or after the eleventh day
42 of June, one thousand nine hundred seventy-six, to the extent
43 such service credit does not duplicate a service credit already
44 given to such member by the retirement system of the
45 department of public safety or the municipal retirement system,
46 whichever applies: *Provided further*, That such service credit
47 relates to periods employed subsequent to retirement from
48 one of the aforementioned retirement systems: *And provided*
49 *further*, That an employer and employee contribution be made

50 as required by the retirement board for any period subsequent
51 to the first day of July, one thousand nine hundred sixty-one.

52 (c) Any member of the state Legislature, the clerk of the
53 House of Delegates, the clerk of the state Senate or any
54 member of the legislative body of any other political sub-
55 division shall become a member of the retirement system
56 provided he notifies the retirement system in writing of his
57 intention to be a member of the system and files a member-
58 ship enrollment form as the board of trustees shall prescribe,
59 and each person, upon filing his written notice to participate
60 in the retirement system, shall by said act authorize the clerk
61 of the House of Delegates or the clerk of the state Senate
62 or such person as the legislative body of any other political
63 subdivision shall designate to deduct such member's contri-
64 bution, as provided in subsection (b), section twenty-nine of
65 this article, and after said deductions have been made from
66 said member's compensation, such deductions shall be for-
67 warding to the retirement system.

68 (d) Should any question arise regarding the membership
69 status of any employee, the board of trustees has the final
70 power to decide the question.

§5-10-18. Termination of membership.

1 When a member of the retirement system retires or dies, he
2 ceases to be a member. When a member leaves the employ of
3 a participating public employer for any other reason, he ceases
4 to be a member and forfeits service credited to him at that
5 time. If he becomes reemployed by a participating public
6 employer he shall be reinstated as a member of the retirement
7 system and his credited service last forfeited by him shall be
8 restored to his credit: *Provided*, That if five or more years
9 have passed since he last left the employ of a participating
10 public employer, he must have had at least five years of past
11 credited service, of which at least three years are contributing
12 service, and be reemployed for a period of one year or longer
13 to have such service restored: *Provided, however*, That he
14 returns to the members' deposit fund the amount, if any, he
15 withdrew therefrom, together with regular interest thereon
16 from the date of withdrawal to the date of repayment.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less
2 than six thousand dollars annually on the effective date of this
3 section shall receive, upon application, a supplemental benefit,
4 prospectively, under this section in any fiscal year for which
5 the Legislature provides by line item appropriation for the pay-
6 ment of such benefit: *Provided*, That the effective date of re-
7 tirement for such annuitant was prior to the first day of July,
8 one thousand nine hundred seventy-six, and he had ten years
9 or more of credited service at the time of such retirement. Any
10 annuitant retired pursuant to the disability provisions of this
11 article shall be considered to have had ten years or more
12 credited service at the time of such retirement.

13 Each such annuitant shall receive as his supplemental bene-
14 fit an increased annual amount which is the product of the sum
15 of fifteen dollars multiplied by his years of credited service:
16 *Provided*, That the total annuity of any annuitant affected by
17 the provisions of this section, together with any of the other
18 provisions of this article or any other article or chapter of this
19 code, shall not exceed six thousand dollars annually.

20 For the purpose of calculating the supplemental benefit pro-
21 vided in this section, fractional parts of a service credit year
22 are to be disregarded unless in excess of one half of a credited
23 service year, in which event the same shall constitute a full
24 year of service credit.

§5-10-31a. Retroactive contributions to the retirement system.

1 Those public employers who are participating in the West
2 Virginia public employees retirement system and elected to
3 participate after the first day of July, one thousand nine
4 hundred sixty-one, and those employers who are eligible but
5 who have not elected to participate, may elect to cover
6 their employees retroactively for the period of their prior
7 employment by such employer to the first day of July, one
8 thousand nine hundred sixty-one, under the following terms
9 and rules and regulations to be promulgated by the board of
10 trustees of the retirement system:

11 (a) The participating employer, in order to provide the

12 benefits set forth herein, shall pay an additional contribution
13 to the retirement system as shall be the actuarial equivalent
14 of the amount which would have been contributed, together
15 with earnings thereon, by the employer had the employee
16 who is to receive retroactive credit been covered during the
17 period of the retroactive service credit. This contribution may
18 be made by the employer either in one lump sum or, at the
19 election of the employer, by level term payments over a
20 period not in excess of fifteen years or by both lump sum
21 payments and level term payments, as determined by the em-
22 ployer and the board of trustees under rules and regulations
23 promulgated by the board;

24 (b) The additional service credit shall be applicable to
25 employees working for the participating employer on the ef-
26 fective date of the change of date of participation;

27 (c) There shall be no increase in benefits and annuities
28 paid to former members of the system who were retired prior
29 to the effective date of this section;

30 (d) Employees entitled to retroactive service credit under
31 the provisions of this section shall make such additional contri-
32 bution to the retirement system equal to the actuarial equivalent
33 of the amount which would have been contributed, together
34 with earnings thereon, by the employee had the employee
35 been covered during the period of the retroactive service
36 credit;

37 (e) Each employer and employee shall be required to pay
38 into the retirement system in the manner hereinafter pro-
39 vided the amount necessary for the additional service credit
40 provided by this section, based upon an actuarial study of
41 each employer that elects to participate in the retirement system
42 under this section and as determined by the board of trustees;

43 (f) The actuarial basis for determining the additional
44 contributions shall be that currently in effect for the valuation
45 of the retirement system on the effective date of the em-
46 ployer's election;

47 (g) Any new participating employer and any participating
48 employer which is currently a participant and who began

49 participating after the first day of July, one thousand nine
 50 hundred sixty-one, who desires additional service credit must
 51 elect to provide such service credit within one year following
 52 the effective date of this section;

53 (h) Any participating employer requesting additional
 54 service credit as provided by this section shall provide such
 55 employee data as may be requested from the board of trustees
 56 of the retirement system for the determination of the em-
 57 ployer's contributions; and

58 (i) The consulting actuary's fees for computing the addi-
 59 tional contribution rates under this section shall be paid direct-
 60 ly by the participating employer to the consulting actuary
 61 selected by the board of trustees of the retirement system.

CHAPTER 111

(Com. Sub. for H. B. 1266—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing salaries of members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual salaries
 2 pursuant to appropriation by the Legislature, payable at least
 3 monthly as follows:

4 Any lieutenant colonel shall receive an annual salary of
5 twenty-three thousand seven hundred eighty-four dollars; any
6 major shall receive an annual salary of twenty-one thousand
7 five hundred twenty-eight dollars; any captain shall receive an
8 annual salary of nineteen thousand seven hundred eighty-eight
9 dollars; any lieutenant shall receive an annual salary of eighteen
10 thousand five hundred eighty-eight dollars; any master sergeant
11 or first sergeant shall receive an annual salary of seventeen
12 thousand four hundred thirty-six dollars; any sergeant shall re-
13 ceive an annual salary of sixteen thousand five hundred eighty-
14 four dollars; any corporal shall receive an annual salary of
15 fifteen thousand six hundred ninety-six dollars; any trooper
16 first class shall receive an annual salary of fourteen thousand
17 seven hundred eighty-four dollars; and any newly enlisted
18 trooper shall receive a salary of one thousand sixty-seven dollars
19 monthly during the period of his basic training, and upon the
20 satisfactory completion of such training and assignment to
21 active duty each such trooper shall receive, during the re-
22 mainder of his first year's service a salary of one thousand
23 one hundred fifty-three dollars monthly. During the second year
24 of his service in the department each trooper shall receive
25 an annual salary of fourteen thousand one hundred forty-eight
26 dollars; during the third year of his service each such trooper
27 shall receive an annual salary of fourteen thousand three hun-
28 dred seventy-six dollars; and during the fourth and fifth
29 year of such trooper's service and for each year thereafter he
30 shall receive an annual salary of fourteen thousand five hundred
31 sixty-eight dollars. Each member of the department whose salary
32 is specified herein shall receive and be entitled to an in-
33 crease in salary over that hereinbefore set forth, for grade in
34 rank, based on length of service, including that heretofore
35 and hereafter served with the department, as follows: At
36 the end of five years of service with the department, such
37 member shall receive a salary increase of three hundred dollars
38 to be effective during his next three years of service and a like
39 increase at three-year intervals thereafter, with such increases
40 to be cumulative.

41 In applying the foregoing salary schedule where salary
42 increases are provided for length of service, members of the
43 department in service at the time this article becomes effective

44 shall be given credit for prior service and shall be paid such
45 salaries as the same length of service will entitle them to re-
46 ceive under the provisions hereof.

47 The Legislature finds and declares that there is litigation
48 pending in circuit court of Kanawha County on the question
49 whether members of the department of public safety are
50 covered by the provisions of the state wage and hour law,
51 article five-c, chapter twenty-one of this code. The Legislature
52 further finds and declares that because of the unique duties of
53 members of the department, it is not appropriate to apply said
54 wage and hour provisions to them. Accordingly, members
55 of the department of public safety are hereby excluded from
56 the provisions of said wage and hour law. The express ex-
57 clusion hereby enacted shall not be construed as any indica-
58 tion that such members were or were not heretofore covered
59 by said wage and hour law.

60 In lieu of any overtime pay they might otherwise have re-
61 ceived under the wage and hour law, and in addition to their
62 salaries and increases for length of service, members who have
63 completed basic training may receive supplemental pay as
64 hereinafter provided.

65 The superintendent shall, within thirty days after the effec-
66 tive date hereof, promulgate a rule or regulation to establish the
67 number of hours per month which shall constitute the standard
68 work month for the members of the department. Such rule
69 or regulation shall further establish, on a graduated hourly
70 basis, the criteria for receipt of a portion or all of such
71 supplemental payment when hours are worked in excess of said
72 standard work month. Such rule or regulation shall be pro-
73 mulgated pursuant to the provisions of chapter twenty-nine-a
74 of the code. The superintendent shall certify monthly to the
75 department's payroll officer the names of those members who
76 have worked in excess of the standard work month and the
77 amount of their entitlement to supplemental payment.

78 The supplemental payment shall be in an amount equal to
79 one and one-half percent of the annual salary of a trooper
80 during his second year of service, not to exceed one hundred
81 seventy-five dollars monthly. The superintendent and civilian

82 employees of the department shall not be eligible for any
83 such supplemental payments.

84 Each member of the department, except the superintendent
85 and civilian employees, shall execute, before entering upon
86 the discharge of his duties, a bond with security in the sum
87 of five thousand dollars payable to the state of West Virginia,
88 conditioned upon the faithful performance of his duties, and
89 such bond shall be approved as to form by the attorney
90 general and to sufficiency by the governor.

91 Any member of the department who is called to perform
92 active duty for training or inactive duty training in the national
93 guard or any reserve component of the armed forces of the
94 United States annually shall be granted upon request leave
95 time not to exceed thirty calendar days for the purpose of
96 performing such active duty for training or inactive duty train-
97 ing, and the time so granted shall not be deducted from any
98 leave accumulated as a member of the department.

CHAPTER 112

(H. B. 1389—By Mr. Holmes)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-seven, twenty-nine and thirty-three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum retirement, disability and survivors benefits for members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections twenty-seven, twenty-nine and thirty-three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-27. Retirement; awards and benefits.

§15-2-29. Awards and benefits for disability—Incurred in performance of duty.

§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

§15-2-27. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of the
2 department of public safety when the member has both
3 attained the age of fifty-five years and completed twenty-five
4 years of service as a member of the department, including
5 military service credit granted under the provisions of section
6 twenty-eight of this article.

7 (b) The retirement board shall retire any member of the
8 department of public safety who has lodged with the secretary
9 of the retirement board his voluntary petition in writing for
10 retirement, and:

11 (1) Has or shall have completed twenty-five years of
12 service as a member of the department (including military
13 service credit granted under the provisions of section twenty-
14 eight of this article);

15 (2) Has or shall have attained the age of fifty years and
16 has or shall have completed twenty years of service as a
17 member of the department (excluding military service credit
18 granted under section twenty-eight of this article); or

19 (3) Being under the age of fifty years has or shall have
20 completed twenty years of service as a member of the de-
21 partment (excluding military service credit granted under
22 section twenty-eight of this article).

23 (c) When the retirement board retires any member under
24 any of the following provisions of this section, the board
25 shall, by order in writing, make an award directing that the
26 member shall be entitled to receive annually and that there
27 shall be paid to the member from the death, disability and
28 retirement fund in equal monthly installments during the
29 natural lifetime of the member while in status of retirement
30 one or the other of two amounts, whichever is the greater:

31 (1) An amount equal to four and one-half percent of the
32 aggregate of salary paid to the member during the whole
33 period of service as a member of the department of public
34 safety; or

35 (2) The sum of four thousand two hundred dollars.

36 When a member has or shall have served twenty years or
37 longer but less than twenty-five years as a member of the
38 department and shall be retired under any of the provisions
39 of this section before he shall have attained the age of
40 fifty years, payment of monthly installments of the amount
41 of retirement award to such member shall commence on the
42 date he attains the age of fifty years.

§15-2-29. Awards and benefits for disability—Incurred in performance of duty.

1 Any member of said department who has been or shall
2 become physically or mentally permanently disabled by in-
3 jury, illness or disease resulting from any occupational risk
4 or hazard inherent in or peculiar to the services required
5 of members of said department and incurred pursuant to or
6 while such member was or shall be engaged in the performance
7 of his duties as a member of said department shall, if, in
8 the opinion of the retirement board, he is by reason of such
9 cause unable to perform adequately the duties required of
10 him as a member of said department, be retired from active
11 service by the retirement board and thereafter such member
12 shall be entitled to receive annually and there shall be paid
13 to such member from the death, disability and retirement fund
14 in equal monthly installments during the natural lifetime of
15 such member or until such disability shall sooner terminate,
16 one or the other of two amounts, whichever is greater:

17 (1) An amount equal to five percent of the total salary
18 which would have been earned during twenty-five years of
19 service in said department based on the average earnings of
20 such member while employed as a member of said department;
21 or

22 (2) The sum of four thousand two hundred dollars.

23 If such disability shall be permanent and total to the
24 extent that such member is or shall be incapacitated ever to

25 engage in any gainful employment, such member shall be
26 entitled to receive annually and there shall be paid to such
27 member from the death, disability and retirement fund in
28 equal monthly installments during the natural lifetime of
29 such member or until such disability shall sooner terminate,
30 an amount equal to eight percent of the total salary which
31 would have been earned by such member during twenty-five
32 years of service in said department based on the average
33 earnings of such member while employed as a member of said
34 department.

35 The superintendent is authorized to expend moneys from
36 funds appropriated for the department in payment of medical,
37 surgical, laboratory, X-ray, hospital, ambulance and dental
38 expenses and fees, and reasonable costs and expenses in-
39 curred in purchase of artificial limbs and other approved
40 appliances which may be reasonably necessary for any mem-
41 ber of said department who has or shall become temporarily,
42 permanently or totally disabled by injury, illness or disease
43 resulting from any occupational risk or hazard inherent in
44 or peculiar to the service required of members of said de-
45 partment and incurred pursuant to or while such member
46 was or shall be engaged in the performance of duties as a
47 member of said department. Whenever the superintendent
48 shall determine that any disabled member is ineligible to re-
49 ceive any of the aforesaid benefits at public expense the
50 superintendent shall, at the request of such disabled member,
51 refer such matter to the retirement board for hearing and final
52 decision.

§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

1 The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has lost or
3 shall lose his life by reason of injury, illness or disease re-
4 sulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while such
6 member was or shall be engaged in the performance of his
7 duties as a member of said department or if said member
8 shall die from any cause after having been retired pursuant
9 to the provisions of section twenty-nine of this article, shall

10 be entitled to receive and shall be paid from the death,
11 disability and retirement fund benefits as follows: To the
12 surviving spouse annually, in equal monthly installments
13 during his or her lifetime or until his or her remarriage one
14 or the other of two amounts, whichever shall be the greater,
15 namely:

16 (1) An amount equal to five percent of the total salary
17 which would have been earned by said deceased member during
18 twenty-five years of service in said department based on the
19 average earnings of such member while employed as a member
20 of said department; or

21 (2) The sum of four thousand two hundred dollars.

22 In addition thereto such surviving spouse shall be entitled
23 to receive and there shall be paid to such person one hundred
24 dollars monthly for each dependent child or children. If such
25 surviving spouse shall die or remarry or if there be no surviving
26 spouse there shall be paid monthly to such dependent child
27 or children from the death, disability and retirement fund
28 the sum of one hundred dollars each. If there be no surviving
29 spouse and no dependent child or children, there shall be paid
30 annually in equal monthly installments from said death, dis-
31 ability and retirement fund to the dependent parents of said
32 deceased member during their joint lifetimes a sum equal to the
33 amount which a surviving spouse, without children, would
34 have received: *Provided*, That when there shall be but one
35 dependent parent surviving, such parent shall be entitled to
36 receive during his or her lifetime one half the amount which
37 both parents, if living, would have been entitled to receive.

CHAPTER 113

(Com. Sub. for H. B. 1505—By Mr. Burdette)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amend-

ed, by adding thereto a new section, designated section one-a, relating to mandating the public service commission to adopt a supplemental rule for reorganization; submission of certain reports relating to such reorganization and other matters; filing such rule and reports with Legislature and the time and procedure therefor.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1a. Supplemental rule for reorganization; certain reports to be made to the Legislature; filing of such rule and reports and the procedure therefor.

1 (a) The public service commission shall submit to the Legis-
2 lature a supplemental rule for reorganization to supplement
3 General Order No. 195, Rule for Reorganization, previously
4 submitted to the Legislature on the first day of the regular ses-
5 sion one thousand nine hundred eighty. Such supplemental
6 rule shall specifically address and incorporate to the fullest
7 extent possible each matter disapproved in a concurrent reso-
8 lution of the Legislature adopted at its regular session in the
9 year one thousand nine hundred eighty approving in part and
10 disapproving in part the said General Order No. 195, Rule
11 for Reorganization.

12 (b) The commission shall before the second day of January,
13 one thousand nine hundred eighty-one, adopt such supplemen-
14 tal rule by order, which order shall promulgate the same as a
15 rule of the commission to be effective upon the date specified
16 in said order, which date shall be no later than the thirty-first
17 day of December, one thousand nine hundred eighty-one. Certi-
18 fied copies of such order and rule shall be filed on the first
19 day of the regular session of the Legislature, one thousand nine
20 hundred eighty-one, by the chairman of the commission with
21 the clerk of each house of the Legislature, the governor and

22 the secretary of state. The chairman of the commission shall
23 also file with the office of the secretary of state the receipt of
24 the clerk of each house and of the governor, which receipt
25 shall evidence compliance with this section.

26 Upon the filing of a certified copy of such order and rule,
27 the clerk of each house of the Legislature shall report the same
28 to their respective houses and the presiding officer thereof
29 shall refer the same to appropriate standing committee or com-
30 mittees.

31 Within the limits of funds appropriated therefor, the rule
32 of the public service commission adopted pursuant to this sec-
33 tion shall be effective upon the date specified in the order of
34 the commission promulgating it unless an alternative plan be
35 adopted by general law or unless the rule is disapproved by a
36 concurrent resolution of the Legislature adopted prior to ad-
37 journment sine die of the regular session of the Legislature to
38 be held in the year one thousand nine hundred eighty-one:
39 *Provided*, That if such rule is approved in part and disapproved
40 in part by a concurrent resolution of the Legislature adopted
41 prior to such adjournment, such rule shall be effective to the
42 extent and only to the extent that the same is approved by
43 such concurrent resolution.

44 The rule promulgated and made effective pursuant to this
45 section shall be effective notwithstanding any other provision
46 of this code for the promulgation of rules or regulations.

47 (c) In addition to filing the supplemental rule for reorgani-
48 zation as provided for in subsection (a) of this section, the
49 chairman of the public service commission shall also file, ac-
50 cording to procedure provided in subsection (b) of this section,
51 those additional reports set forth in the concurrent resolution
52 referred to in subsection (a) of this section.

53 (d) The public service commission may include in such sup-
54 plemental rule an itemization of which members of the staff
55 of the public service commission required for the consumer
56 advocate division shall be exempted from the salary schedules
57 or any plan adopted by the civil service commission and
58 identify such staff members by job classification or designation,

59 together with the salary or salary ranges for each job classifi-
60 cation or designation.

CHAPTER 114

(H. B. 890—By Mr. Martin, 35th Dist., and Mr. Caudle)

[Passed February 15, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of convenience and necessity for common carriers by motor vehicles; giving the public service commission the duty to prescribe rules for conducting certificate hearings; placing the burden of proof on the applicant; requiring public service commission permission to transfer a certificate including after the death of the person holding the certificate; authorizing the commission to suspend, revoke or amend a certificate; and authorizing the reaffirmation of said certificates issued since the tenth day of March, one thousand nine hundred seventy-nine.

Be it enacted by the Legislature of West Virginia:

That section five, article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-5. Certificate of convenience and necessity.

1 (a) *Required; application; hearing; granting.*—It shall
2 be unlawful for any common carrier by motor vehicle to
3 operate within this state without first having obtained from
4 the commission a certificate of convenience and necessity.
5 Upon the filing of an application for such certificate, the
6 commission shall set a time and place for a hearing on the
7 application: *Provided*, That the commission may, after giving

8 proper notice and if no protest is received, waive formal
9 hearing on the application. Notice shall be by publication
10 which shall state that a formal hearing may be waived in the
11 absence of a protest to such application. The notice shall be
12 published as a Class I legal advertisement in compliance with
13 the provisions of article three, chapter fifty-nine of this code
14 and the publication area for such publication shall be the
15 proposed area of operation. The notice shall be published
16 at least ten days prior to the date of the hearing. After the
17 hearing or waiver by the commission of the hearing, if the
18 commission finds from the evidence that the public con-
19 venience and necessity require the proposed service or any
20 part thereof, it shall issue the certificate as prayed for, or
21 issue it for the partial exercise only of the privilege sought,
22 and may attach to the exercise of the right granted by such
23 certificate such terms and conditions as in its judgment the
24 public convenience and necessity may require, and if the
25 commission shall be of the opinion that the service rendered
26 by any common carrier holding a certificate of convenience
27 and necessity over any route or routes in this state is in any
28 respect inadequate or insufficient to meet the public needs,
29 such certificate holder shall be given reasonable time and
30 opportunity to remedy such inadequacy or insufficiency before
31 any certificate shall be granted to an applicant proposing to
32 operate over such route or routes as a common carrier. Be-
33 fore granting a certificate to a common carrier by motor vehicle
34 the commission shall take into consideration existing trans-
35 portation facilities in the territory for which a certificate is
36 sought, and in case it finds from the evidence that the service
37 furnished by existing transportation facilities is reasonably
38 efficient and adequate, the commission shall not grant such
39 certificate.

40 (b) *Rules and regulations; taking evidence at hearings;*
41 *burden of proof.*—The commission shall prescribe such
42 rules and regulations as it may deem proper for the
43 enforcement of the provisions of this section and in
44 establishing that public convenience and necessity do exist
45 the burden of proof shall be upon the applicant. The com-
46 mission may designate any of its employees to take evidence
47 at the hearing of any application for a certificate and submit

48 findings of fact as a part of a report or reports to be made to
49 the commission.

50 (c) *Certificate not franchise, etc.; assignment or transfer.*—
51 No certificate issued in accordance with the terms of this
52 chapter shall be construed to be either a franchise or
53 irrevocable or to confer any proprietary or property rights
54 in the use of the public highways. No certificate issued under
55 this chapter shall be assigned or otherwise transferred without
56 the approval of the commission. Upon the death of a person
57 holding a certificate, his personal representative or representa-
58 tives may operate under such certificate while the same
59 remains in force and effect and, with the consent of the com-
60 mission, may transfer such certificate.

61 (d) *Suspension, revocation or amendment.*—The com-
62 mission may at any time, for good cause, suspend and, upon
63 not less than fifteen days' notice to the grantee of any certifi-
64 cate and an opportunity to be heard, revoke or amend any
65 certificate.

66 (e) The commission shall have the authority, after hearing,
67 to ratify, approve and affirm those orders issued pursuant to
68 this section since the tenth day of March, nineteen hundred
69 seventy-nine. For the purposes of this subsection the com-
70 mission may give notice by a Class I legal advertisement of
71 such hearing in any newspaper or newspapers of general
72 circulation in this state, and such other newspapers as the
73 commission may designate.

CHAPTER 115

(Com. Sub. for H. B. 986—By Mr. Stephens and Mr. Shaffer)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to prohibiting the storage and disposal of radioactive waste

material within the state; defining certain terms; providing exceptions for radioactive waste material produced within the state as a result of medical, educational, research or industrial activities; providing exceptions for transportation of radioactive waste material out of or through the state; providing for the authority of the director of health; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-seven, to read as follows:

ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-1. Definitions.

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

§16-27-3. Authority of director of health.

§16-27-4. Penalties.

§16-27-1. Definitions.

1 As used in this article:

2 (1) "Byproduct material" means (i) any radioactive ma-
3 terial (except special nuclear material) yielded in or made
4 radioactive by exposure to the radiation incident to the pro-
5 cess of producing or utilizing special nuclear material, and
6 (ii) the tailings or wastes produced by the extraction or con-
7 centration of uranium or thorium from any ore processed
8 primarily for its source material content;

9 (2) "Dispose" or "disposal" means the discharge, deposit,
10 injection, dumping, spilling, leaking or placing of a substance
11 into or on any land, water or air;

12 (3) "Radioactive waste material" means any discarded
13 radioactive material in the form of, or resulting from the use
14 of, any byproduct material, source material or special nuclear
15 material;

16 (4) "Source material" means (i) uranium or thorium, or
17 any combination thereof, in any physical or chemical form; or

18 (ii) ores which contain by weight one-twentieth of one percent
19 (0.05%) or more of (a) uranium, (b) thorium or (c) any com-
20 bination thereof. Source material does not include special nu-
21 clear material;

22 (5) "Special nuclear material" means (i) plutonium, uran-
23 ium 233, uranium enriched in the isotope 233 or in the isotope
24 235; or (ii) any material artificially enriched by any of the
25 foregoing but does not include source material;

26 (6) "Store" or "storage" means the containment of a sub-
27 stance, either on a temporary basis or for a period of years,
28 in such a manner as not to constitute disposal or transpor-
29 tation; and

30 (7) "Transport" or "transportation" means any movement
31 of a substance and any loading, unloading or storage incidental
32 thereto.

33 The governor shall have the authority to add, by executive
34 order, to the listing of materials constituting "source material"
35 or "special nuclear material" by including such additional like
36 material as may be determined by the federal Nuclear Regu-
37 latory Commission to constitute "source material" or "special
38 nuclear material."

**§16-27-2. Storage or disposal of radioactive waste material within
the state prohibited; exceptions.**

1 No person shall store or dispose of any radioactive waste
2 material within the state: *Provided*, That the provisions of
3 this section shall not be deemed to prohibit (1) the storage
4 or disposal of such material produced within the state as a
5 result of medical, educational, research or industrial activities
6 and so stored or disposed of in compliance with all applicable
7 state and federal laws, or (2) the transportation of such
8 material out of or through the state when done in compliance
9 with all applicable state and federal laws: *Provided, however*,
10 That such waste from industrial activities shall not include,
11 for the purpose of this article, such material produced from
12 the operation of any nuclear power generation facility, nuclear
13 processing facility, or nuclear reprocessing facility.

§16-27-3. Authority of director of health.

1 The director of health shall initiate investigations into any
2 use of radioactive material or disposal of radioactive waste
3 material that might be in violation of the provisions of this
4 article. The director of health shall also be empowered to
5 file complaints for alleged violations of this article and shall
6 assist local law-enforcement officers and prosecuting attorneys
7 in the investigation and prosecution of all violations of this
8 article.

§16-27-4. Penalties.

1 Any person who violates the provisions of section two of
2 this article is guilty of a felony, and, upon conviction thereof,
3 shall be fined not less than one thousand dollars nor more
4 than twenty-five thousand dollars for each day of such
5 violation, or imprisoned in the penitentiary not less than one
6 nor more than five years, or both fined and imprisoned. If
7 the conviction is for a violation committed after a first con-
8 viction of such person under this subsection, the person shall
9 be guilty of a felony, and, upon conviction thereof, shall be
10 fined not less than five thousand dollars nor more than fifty
11 thousand dollars for each day of such violation, or shall be
12 imprisoned not less than two nor more than ten years, or
13 both fined and imprisoned.

CHAPTER 116

(S. B. 236—By Mr. Brotherton, Mr. President, Mr. Galperin,
Mr. Nelson, Mr. Rollins and Miss Herndon)

[Passed March 5, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, nine and fourteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing and qualifying of real estate brokers and salespersons; defining "associate broker"; requiring attorneys-at-law to take an ex-

amination in order to qualify for a broker's license; exempting attorneys-at-law who presently hold a broker's license from taking an examination; providing that an applicant must be a high school graduate; requiring applicants to meet certain instructional requirements; exempting certain applicants who hold a valid license from the instructional requirements; exempting coal, oil or gas transactions from effects of article; requiring the commission to approve instructional courses and provide correspondence courses and to publish a list of such approved courses; and providing a fee schedule.

Be it enacted by the Legislature of West Virginia:

That sections two, four, nine and fourteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

§47-12-2. Definitions and exceptions.

§47-12-4. Qualifications for licenses.

§47-12-9. License fees; annual registration; fees for additional offices, charge for change of location and for duplicate or transfer of licenses.

§47-12-14. Real estate courses for licensees; assisting studies, surveys, etc.

§47-12-2. Definitions and exceptions.

1 (a) The term "real estate broker" within the mean-
 2 ing of this article includes all persons, partnerships,
 3 associations and corporations, foreign and domestic, who
 4 for a fee, commission or other valuable consideration
 5 or who with the intention or expectation of receiving
 6 or collecting the same, lists, sells, purchases, exchanges,
 7 rents, manages, leases or auctions any real estate or
 8 the improvements thereon, including options, or who
 9 negotiates or attempts to negotiate any such activity;
 10 or who advertises or holds himself, itself or themselves
 11 out as engaged in such activities; or who directs or as-
 12 sists in the procuring of a purchaser or prospect cal-
 13 culated or intended to result in a real estate transac-
 14 tion. The term "real estate broker" shall also include
 15 any person, partnership, association or corporation em-

16 ployed by or on behalf of the owner or owners of lots,
17 or other parcels of real estate, at a stated salary or
18 upon a fee, commission or otherwise to sell such real
19 estate, or any parts thereof, in lots or other parcels,
20 and who shall sell, manage, exchange, lease, offer, at-
21 tempt or agree to negotiate the sale, exchange or lease
22 of any such lot or parcel of real estate.

23 (b) The term "real estate" as used in this article
24 includes leaseholds as well as any and every interest
25 or estate in land, whether corporeal or incorporeal, free-
26 hold or nonfreehold, and whether said property is situat-
27 ed in this state or elsewhere.

28 (c) The term "associate broker" means any person
29 who for compensation or other valuable consideration is
30 employed by a broker to perform all the functions au-
31 thorized by a broker's license only for and on behalf of
32 such employing broker including, but not limited to,
33 authority to supervise other salesmen employed by a
34 broker and manage an office on behalf of a broker.

35 (d) The term "real estate salesman" means and in-
36 cludes any person employed or engaged by or on behalf
37 of a licensed real estate broker to do or deal in any
38 activity as included in this section, for compensation or
39 otherwise.

40 (e) One act in consideration of or with the expecta-
41 tion or intention of or upon the promise of receiving
42 compensation by fee, commission or otherwise, in the
43 performance of any act or activity contained in this
44 section, constitutes such persons, partnerships, asso-
45 ciation or corporation, a real estate broker and make him,
46 them or it subject to the provisions and requirements of
47 this article.

48 (f) The term "real estate broker" or "real estate
49 salesman" shall not include any person, partnership, as-
50 sociation or corporation, who, as a bona fide owner or
51 lessor, performs any aforesaid act:

52 (1) With reference to property owned or leased by
53 him or to the regular employees thereof, where such

54 acts are performed in the regular course of or as an
55 incident to the management of, such property and the
56 investment therein;

57 (2) Nor shall this article be construed to include
58 attorneys-at-law, except that attorneys-at-law shall be
59 required to submit to the written examination required
60 under section seven of this article in order to qualify for
61 a broker's license: *Provided*, That an attorney-at-law
62 who is licensed as a real estate broker prior to the effective
63 date of this section is exempt from the written examina-
64 tion required under section seven of this article;

65 (3) Nor any person holding in good faith a duly
66 executed power of attorney from the owner authorizing
67 the final consummation and execution for the sale, pur-
68 chase, lease or exchange of real estate;

69 (4) Nor to the acts of any person while acting as a
70 receiver, trustee, administrator, executor, guardian, or
71 under the order of any court or while acting under
72 authority of a deed of trust or will;

73 (5) Nor shall this article apply to public officers
74 while performing their duties as such;

75 (6) Nor shall this article apply to the acquisition or
76 disposition of coal, oil or gas leasehold or coal, oil or gas
77 interests.

§47-12-4. Qualifications for licenses.

1 (1) Licenses shall be granted only to persons who are
2 trustworthy, of good character and competent to transact
3 the business of a real estate broker or real estate sales-
4 man in such manner as to safeguard the interests of the
5 public. Every applicant for a license as a real estate
6 broker shall be of the age of eighteen years or over, a
7 citizen of the United States and shall have served a bona
8 fide apprenticeship as a licensed real estate salesman
9 for two years or shall produce to the real estate com-
10 mission satisfactory evidence of real estate experience.
11 No broker's license shall be issued to a partnership,
12 association or corporation unless each member or officer

13 thereof who will actively engage in the real estate busi-
14 ness be licensed as a real estate salesman or associate
15 broker, when and after said broker shall have been grant-
16 ed a broker's license.

17 (2) A broker's or salesperson's license may be issued
18 to any person who is either a high school graduate or
19 the holder of a certificate of high school equivalency.

20 (3) Applicants for a broker's license shall show evi-
21 dence satisfactory to the commission that they have com-
22 pleted at least one hundred eighty clock-hours (twelve
23 credit hours) of formal instruction in a real estate course
24 or courses approved by the commission. Such courses
25 must cover real estate principles, real estate law, real
26 estate appraising, and real estate finance and such other
27 topics approved by the commission. The applicant shall
28 satisfactorily pass an examination or examinations cover-
29 ing the material taught in each such course.

30 (4) Applicants for a salesperson's license shall show
31 evidence satisfactory to the commission that they have
32 completed at least ninety clock-hours (six credit hours)
33 of formal instruction in a real estate course or courses
34 approved by the commission. Such courses must cover
35 real estate principles, real estate law, real estate apprais-
36 ing, and real estate finance, and such other topics ap-
37 proved by the commission. The applicant shall satis-
38 factorily pass an examination covering the material
39 taught in each such course.

40 (5) Subsections (3) and (4) of this section do not apply
41 to any applicant who holds a valid broker's or sales-
42 person's license issued prior to the first day of July, one
43 thousand nine hundred eighty. Each such applicant
44 shall complete at least ninety clock-hours (six credit
45 hours) of instruction as specified in subsection (3) of
46 this section if he has not completed the broker's exami-
47 nation required under section seven of this article by the
48 first day of July, one thousand nine hundred eighty-two.

49 (6) The commission, pursuant to this section, shall
50 publish a list of real estate courses which are approved

51 and shall update such list yearly. Additionally, the com-
52 mission shall, on request of any person, evaluate a specific
53 course or courses which are not on the approved list and
54 approve or disapprove such course or courses promptly
55 and in writing.

**§47-12-9. License fees; annual registration; fees for additional
offices, charge for change of location and for
duplicate or transfer of licenses.**

1 To pay for the maintenance and operation of the
2 office of the commission and the enforcement of this
3 article, the commission shall charge the following fees:

4 (a) Examination fee—twenty-five dollars, with no ad-
5 ditional fee for second examination.

6 (b) Investigation fee—ten dollars.

7 (c) Broker's license—fifty dollars.

8 (d) Salesperson's license—twenty-five dollars.

9 (e) Broker's renewal fee—fifty dollars, payable by
10 the thirtieth day of June of each year.

11 (f) Salesperson's renewal fee—twenty-five dollars,
12 payable by the thirtieth day of June of each year.

13 (g) Branch office fee—fifty dollars.

14 (h) Renewal of branch office license—five dollars.

15 (i) Transfer of salesperson's license—ten dollars.

16 (j) Duplicate license or certification—five dollars.

17 (k) Change of name—five dollars.

18 (l) Change of office—ten dollars.

19 Willful failure to pay any of the fees required under
20 this article is just cause for revocation of or refusal to
21 issue or renew a license: *Provided*, That no such action
22 may be taken because a check is returned unpaid.

**§47-12-14. Real estate courses for licensees; assisting studies,
surveys, etc.**

1 (a) The commission is authorized to conduct, or hold
2 or to assist in conducting or holding real estate courses
3 or institutes. The commission may incur and pay the

4 necessary expenses in connection therewith. Such
5 courses or institutes are open to any licensee without
6 charge or fee.

7 (b) The commission is hereby authorized to assist
8 libraries, real estate institutes and foundations with
9 financial aid or otherwise, in providing texts, sponsoring
10 studies, surveys and programs for the benefit of real
11 estate and the elevation of the real estate business.

12 (c) The commission shall provide correspondence
13 courses for applicants for brokers' and salespersons'
14 licenses sufficient to meet the educational requirements
15 contained in subsections (3) and (4), section four of this
16 article as an alternative means of meeting said educa-
17 tional requirements.

CHAPTER 117

(Com. Sub. for S. B. 59—By Mr. Moreland)

{Passed February 27, 1980; in effect from passage. Approved by the Governor.}

AN ACT to amend and reenact section five-b, article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article six by adding thereto a new section, designated section five-c, relating to money and interest; including forbearances of money in fixing maximum interest rate on certain loans secured by mortgages or deeds of trust upon real property; eliminating the requirement that the real property covered by such mortgages or deeds of trust be located in this state; and interest on the forbearance of money.

Be it enacted by the Legislature of West Virginia:

That section five-b, article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article

six be further amended by adding thereto a new section, designated section five-c, all to read as follows:

ARTICLE 6. MONEY AND INTEREST.

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans and forbearances of money secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans and forbearances of money; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

§47-6-5c. Interest on forbearance of money.

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans and forbearances of money secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans and forbearances of money; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in permissible interest rates on non-
3 precomputed loans or forbearances of money require
4 specialized knowledge of the needs for credit for the
5 construction and purchase of adequate housing and of
6 buildings and improvements for the establishment and
7 expansion of businesses and agricultural enterprises and
8 of the availability of such credit at reasonable rates
9 while affording a competitive return to persons extend-
10 ing such credit;

11 (2) Maximum interest rates on nonprecomputed loans
12 or forbearances of money to be secured by mortgages
13 or deeds of trust on real property should be prescribed
14 from time to time to reflect changed economic conditions,
15 current interest rates throughout the United States and
16 the availability of credit in order to promote the making
17 of such loans or forbearances of money; and

18 (3) The prescribing of such maximum interest rates
19 can be accomplished effectively and flexibly by the
20 West Virginia commissioner of banking.

21 (b) In view of the foregoing findings, it is the purpose

22 of this section to authorize the West Virginia com-
23 missioner of banking to prescribe from time to time
24 the maximum interest rates on nonprecomputed loans
25 or forbearances of money made pursuant to this section
26 to be secured by mortgages or deeds of trust on real
27 property, subject to the provisions, conditions and limita-
28 tions hereinafter set forth and to authorize lenders to
29 charge up to the maximum interest rates so fixed.

30 (c) The West Virginia commissioner of banking is
31 hereby authorized and directed to prescribe each month
32 by order a maximum rate of interest for the next
33 succeeding month for any nonprecomputed loan or
34 forbearance of money made pursuant to this section to
35 be secured by a mortgage or deed of trust upon real
36 property, which maximum rate of interest shall not
37 exceed the monthly index of long-term United States
38 government bond yields for the preceding calendar
39 month, plus an additional one and one-half percent per
40 year rounded off to the nearest quarter of one percent
41 per year and such maximum rate shall be valid for the
42 term of the loan contract. For the purpose of this
43 section, the monthly index of long-term United States
44 government bond yields means the monthly unweighted
45 average of the daily unweighted average of the closing
46 bid yield quotations in the over-the-counter market for
47 all outstanding United States treasury bond issues, based
48 on available statistics, which mature in twenty years
49 or more from the date the index is calculated, but shall
50 not include such bonds as are redeemable at par for
51 payment of federal estate taxes. In fixing said maximum
52 rates of interest, the commissioner of banking shall take
53 into consideration prevailing economic conditions in-
54 cluding said monthly index of long-term United States
55 government bond yields for the preceding calendar
56 month, yields on conventional home and multifamily
57 housing mortgage and deed of trust loans throughout
58 the United States and on corporate interest-bearing
59 securities of high quality, and the availability of credit
60 at reasonable rates which will afford a competitive re-
61 turn to persons extending such credit.

62 (d) On or before the twentieth day of each month
63 the West Virginia banking commissioner shall ascertain
64 the monthly index of long-term United States govern-
65 ment bond yields for the preceding calendar month and
66 shall then prescribe by order in accordance with sub-
67 section (c) of this section the maximum rate of interest
68 for the next succeeding month for any nonprecomputed
69 loan or forbearance of money made pursuant to this
70 section to be secured by a mortgage or deed of trust
71 upon real property, and shall cause such maximum rate
72 of interest to be issued to the public, such maximum
73 rate of interest to be effective on the first day of the
74 next succeeding month.

75 (e) Notwithstanding any other provisions of this
76 section, the commissioner of banking shall on or before
77 the effective date of this section prescribe by order the
78 maximum rate of interest for any nonprecomputed loan
79 or forbearance of money pursuant to this section to be
80 secured by a mortgage or deed of trust upon real
81 property for the month in which this section becomes
82 effective and shall at the earliest possible date prescribe
83 the maximum rate of interest for any such loan or
84 forbearance of money for the next succeeding month,
85 and shall issue such maximum rates of interest to the
86 public; and the state commissioner of banking shall
87 thereafter determine and issue the maximum rate of
88 interest for any such loan or forbearance of money in
89 conformity with the other provisions of this section.

90 (f) As an alternative to the interest rate authorized
91 by any other provision of this code, where a nonpre-
92 computed loan or forbearance of money is secured by a
93 mortgage or deed of trust upon real property, the parties
94 may, after the effective date of this section, contract in
95 writing for the payment of interest for such loan or
96 forbearance of money at a rate, including points ex-
97 pressed as a percentage of the loan or forbearance
98 divided by the number of years of the loan or forbear-
99 ance contract, not to exceed the then effective maximum
100 rate prescribed by the state banking commissioner pur-
101 suant to the provisions of this section and such rate

102 shall be valid for the term of such contract: *Provided*,
103 That the points charged shall not exceed one percent
104 of the original bona fide principal amount of the loan
105 or forbearance of money, except that in the case of a
106 construction loan, the points charged shall not exceed
107 two percent of the original bona fide principal amount
108 of the loan: *Provided, however*, That the parties may
109 contract in writing for the payment of interest for such
110 loan or forbearance of money at the rate specified in
111 this subsection (f) only if such contract in writing also
112 specifies that there shall be no penalty whatever for
113 prepayment of the loan or forbearance of money in
114 whole or in part by cash, a new loan, forbearance
115 of money or otherwise, and such contract provision
116 prohibiting any such penalty shall govern and control
117 notwithstanding any other provision of this code to the
118 contrary, whether such other provision was enacted be-
119 fore or after the enactment of this section: *Provided*
120 *further*, That no such contract shall contain an esca-
121 lation of interest clause which would allow an increase
122 in the rate of interest being charged.

123 (g) For the purpose of subsection (f) of this section,
124 the term "points" is defined as the amount of money,
125 or other consideration, received by the lender or for-
126 bearer from whatever source, as a consideration for
127 making the loan or forbearance of money and not other-
128 wise expressly permitted by statute.

129 (h) A commitment to make a nonprecomputed loan
130 or forbearance of money pursuant to this section to be
131 secured by a mortgage or deed of trust upon real property
132 which provides for consummation within some future
133 time may be consummated pursuant to the provisions,
134 including interest rate, of such commitment notwith-
135 standing the fact that the maximum rate of interest at
136 the time the mortgage or deed of trust is entered into
137 is less than the commitment rate of interest: *Provided*,
138 That the commitment rate of interest does not exceed
139 the maximum interest rate in effect on the date the
140 commitment was issued: *Provided, however*, That the
141 commitment when agreed to by the borrower con-

142 stitutes a legally binding obligation on the part of the
143 lender or forbearer to make such a loan or forbear-
144 ance of money within a specified time period in the
145 future at a rate of interest not exceeding the maximum
146 rate of interest effective as of the date of commitment,
147 and the commitment does not include any condition for
148 increase of the interest rate at the time of the consum-
149 mation of the loan or forbearance of money even though
150 the maximum rate of interest is then higher.

151 (i) Nothing contained in this section shall prohibit
152 the parties to any loan transaction or forbearance from
153 contracting for a rate of interest authorized by any
154 other provision of this code.

155 (j) The commissioner of banking shall promulgate
156 rules and regulations requiring all banking institutions,
157 savings and loan associations and other financial insti-
158 tutions making loans in this state of the type specified
159 in this section to file with him quarterly reports as to
160 the number and amount of such loans made during the
161 preceding quarter, and such quarterly reports shall con-
162 tain sufficient detail to ascertain whether the provisions
163 of this section have promoted the making of such loans.

§47-6-5c. Interest on the forbearance of money.

1 Wherever any law authorizes any person to loan money
2 at a certain rate of interest it shall also be lawful for
3 such person to charge a like rate of interest for the for-
4 bearance of money.

CHAPTER 118

(S. B. 399—By Mr. Brotherton, Mr. President)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section two, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eliminating the fees for the processing of extraditions.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1	Except as may be otherwise provided in article one,	
2	chapter thirty-one of this code, the secretary of state	
3	shall charge for services rendered in his office the fol-	
4	lowing fees to be paid by the person to whom the	
5	service is rendered at the time it is done:	
6	For each certificate of incorporation or copy there-	
7	of, including restatements of any such certificates	
8	issued on new agreements, and/or consolidations	
9	or all certificates of merger or consolidation or	
10	certificates authorizing a foreign corporation to	
11	do business within this state	\$10.00
12	For each certified copy of certificate of incorpora-	
13	tion, not to exceed ten pages	10.00
14	If such copy contains in excess of ten pages, for	
15	each additional page20
16	For filing and recording a trademark	5.00
17	For each certificate of change of name, of increase	
18	or decrease of authorized capital stock, of change	
19	of principal office, or of amendment to certificate	
20	of incorporation	5.00
21	For recording a power of attorney and certificate	
22	thereof	3.00
23	For any other certificate, whether required by law	
24	or made at the request of any person	5.00
25	The foregoing fees shall include the tax on the great	
26	seal or the less seal impressed on any such docu-	
27	ment, as well as the filing, recording and indexing	
28	of the same.	
29	For endorsing and filing reports of corporations,	
30	and all other papers, which shall include the in-	
31	dexing of the same, for each report or paper filed	1.00

32	For any search, not less than _____	1.00
33	For searches of more than one hour, for each hour	
34	or fraction thereof consumed in making such	
35	search _____	5.00
36	The cost of the search shall be in addition to the	
37	cost of any certificate issued pursuant thereto or	
38	based thereon.	
39	For entering statement of satisfaction of conditional	
40	sale contract _____	1.00
41	For filing each financing, continuation or termina-	
42	tion statement or other statement or writing per-	
43	mitted to be filed under chapter forty-six of the	
44	code _____	2.00
45	For recording any paper for which no specific fee is	
46	prescribed _____	1.00
47	Or at the rate, for each one hundred words record-	
48	ed, of _____	.20
49	For issuing commission to a notary public, or to a	
50	commissioner of deeds, which shall include the	
51	tax on the state seal thereon and other charges	5.00
52	For a testimonial _____	1.50
53	For a copy of any paper, if one sheet _____	1.00
54	For each sheet of copy after the first _____	.75
55	For issuing a commission to a commissioner in any	
56	other state _____	5.00
57	For any other work or service not herein enumerat-	
58	ed, such fee as may be elsewhere prescribed.	

CHAPTER 119

(S. B. 101—By Mr. Nelson)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, six and twenty-one, article twenty-six, chapter sixteen of the code of

West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the educational qualifications of the director of the West Virginia resource recovery—solid waste disposal authority; removing the requirement that the public service commission give prior approval for charges for rentals and certain services; and permitting the private hauler member of the board of the West Virginia resource recovery—solid waste disposal authority to have a financial interest in an authority project if there is full disclosure and the private hauler does not vote on any measure which would affect him.

Be it enacted by the Legislature of West Virginia:

That sections four, six and twenty-one, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 26. WEST VIRGINIA RESOURCE RECOVERY—SOLID WASTE DISPOSAL AUTHORITY.

§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.

§16-26-6. Powers, duties and responsibilities of authority generally.

§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.

1 The West Virginia resource recovery—solid waste
2 disposal authority is hereby created. The authority is
3 a governmental instrumentality of the state and a body
4 corporate. The exercise by the authority of the powers
5 conferred on it by this article and the carrying out of
6 its purposes and duties are essential governmental
7 functions and for a public purpose.

8 The authority shall be controlled, managed and
9 operated by a five-member board known as the West

10 Virginia resource recovery—solid waste disposal au-
11 thority board which is hereby created. The director
12 of the department of health shall be a member ex
13 officio of the board. The other four members of the board
14 shall be appointed by the governor, by and with the
15 advice and consent of the Senate, for terms of one,
16 two, three and four years, respectively. One appointee
17 shall be a member of the West Virginia association of
18 county officials, one a member of the West Virginia
19 municipal league and a resident of a municipality as
20 defined in section two, article one, chapter eight of this
21 code, one a member of a regional council as defined
22 in section two, article twenty-five, chapter eight of this
23 code and one a contract solid waste hauler who holds
24 a valid certificate of convenience and necessity issued
25 by the public service commission. The successor of each
26 such appointed member shall be appointed for a term
27 of four years in the same manner the original appoint-
28 ments were made and so that the representation on the
29 board as set forth in this section is preserved, except
30 that any person appointed to fill a vacancy occurring
31 prior to the expiration of the term for which his pre-
32 decessor was appointed shall be appointed only for the
33 remainder of such term. Each board member shall serve
34 until the appointment and qualification of his successor.

35 No more than two of the appointed board members may
36 at any one time be from the same congressional district or
37 belong to the same political party. No appointed board
38 member may be an officer or employee of the United
39 States or this state. Appointed board members may be re-
40 appointed to serve additional terms. All members of the
41 board shall be citizens of the state. Each appointed mem-
42 ber of the board, before entering upon his duties, shall
43 comply with the requirements of article one, chapter six
44 of this code and give bond in the sum of twenty-five thou-
45 sand dollars. Appointed members may be removed from
46 the board only for the same causes as elective state
47 officers may be removed.

48 Annually the board shall elect one of its appointed mem-
49 bers as chairman, another as vice chairman and appoint a
50 secretary-treasurer, who need not be a member of the

51 board. Three members of the board shall constitute a
52 quorum and the affirmative vote of three members shall be
53 necessary for any action taken by vote of the board. No
54 vacancy in the membership of the board shall impair the
55 rights of a quorum by such vote to exercise all the rights
56 and perform all the duties of the board and the authority.
57 The person appointed as secretary-treasurer shall give
58 bond in the sum of fifty thousand dollars. If a board mem-
59 ber is appointed as secretary-treasurer, he shall give bond
60 in the sum of twenty-five thousand dollars in addition to
61 the bond required in the preceding paragraph.

62 The director of the department of health shall not
63 receive any compensation for serving as a board mem-
64 ber. Each of the four appointed members of the board
65 shall receive compensation of fifty dollars for each day
66 actually spent in attending meetings of the board or
67 in the discharge of his duties as a member of the board,
68 but not to exceed two thousand five hundred dollars in
69 any fiscal year. Each of the five board members shall
70 be reimbursed for all reasonable and necessary expenses
71 actually incurred in the performance of his duties as
72 a member of the board. All such compensation and ex-
73 penses incurred by board members shall be payable solely
74 from funds of the authority or from funds appropriated
75 for such purpose by the Legislature and no liability
76 or obligation shall be incurred by the authority beyond
77 the extent to which moneys are available from funds
78 of the authority or from such appropriation.

79 The board shall meet at least four times annually and
80 at any time upon the call of its chairman or upon the
81 request in writing to the chairman of three board mem-
82 bers.

83 The board shall appoint a director of the authority.
84 The director shall have successfully completed one full
85 year of graduate school and, in addition, shall have
86 two years of work experience in solid waste manage-
87 ment.

§16-26-6. Powers, duties and responsibilities of authority generally.

1 The West Virginia resource recovery—solid waste

2 disposal authority may exercise all powers necessary
3 or appropriate to carry out and effectuate its corporate
4 purpose. The authority may:

5 (1) Adopt, and from time to time, amend and re-
6 peal bylaws necessary and proper for the regulation
7 of its affairs and the conduct of its business, and rules
8 and regulations, promulgated pursuant to the provisions
9 of chapter twenty-nine-a of this code, to implement and
10 make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in
13 Kanawha County, and, if necessary, regional suboffices
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead
16 and be impleaded in its own name, and particularly to
17 enforce the obligations and covenants made under sec-
18 tions ten, eleven and sixteen of this article. Any actions
19 against the authority shall be brought in the circuit
20 court of Kanawha County.

21 (5) Make loans and grants to persons and to govern-
22 mental agencies for the acquisition or construction of
23 solid waste disposal projects and adopt rules and pro-
24 cedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,
26 furnish, equip, maintain, repair, operate, lease or rent
27 to, or contract for operation by a governmental agency
28 or person, solid waste disposal projects, and, in accord-
29 ance with chapter twenty-nine-a of this code, adopt
30 rules and regulations for the use of such projects.

31 (7) Make available the use or services of any solid
32 waste disposal project to one or more persons, one or
33 more governmental agencies, or any combination there-
34 of.

35 (8) Issue solid waste disposal revenue bonds and
36 notes and solid waste disposal revenue refunding bonds
37 of the state, payable solely from revenues as provided
38 in section nine of this article unless the bonds are re-
39 funded by refunding bond, for the purpose of paying all

40 or any part of the cost of or financing by loans to govern-
41 mental agencies one or more solid waste disposal pro-
42 jects or parts thereof.

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

47 (10) Acquire in the name of the state, by purchase
48 or otherwise, on such terms and in such manner as it
49 deems proper, or by the exercise of the right of eminent
50 domain in the manner provided in chapter fifty-four of
51 this code, such public or private lands, or parts thereof
52 or rights therein, rights-of-way, property, rights, ease-
53 ments and interest it deems necessary for carrying out
54 the provisions of this article, but excluding the acquisition
55 by the exercise of the right of eminent domain of any
56 solid waste disposal facility operated under permits is-
57 sued pursuant to the provisions of article one, chapter
58 sixteen of this code and owned by any person or govern-
59 mental agency. This article does not authorize the
60 authority to take or disturb property or facilities belong-
61 ing to any public utility or to a common carrier, which
62 property or facilities are required for the proper and
63 convenient operation of such public utility or common
64 carrier, unless provision is made for the restoration, re-
65 location or duplication of such property or facilities else-
66 where at the sole cost of the authority.

67 (11) Make and enter into all contracts and agree-
68 ments and execute all instruments necessary or incidental
69 to the performance of its duties and the execution of its
70 powers. When the cost under any such contract or agree-
71 ment, other than compensation for personal services, in-
72 volves an expenditure of more than two thousand dol-
73 lars, the authority shall make a written contract with
74 the lowest responsible bidder after public notice pub-
75 lished as a Class II legal advertisement in compliance
76 with the provisions of article three, chapter fifty-nine
77 of this code, the publication area for such publication
78 to be the county wherein the work is to be performed or
79 which is affected by the contract, which notice shall state

80 the general character of the work and the general
81 character of the materials to be furnished, the place
82 where plans and specifications therefor may be examined
83 and the time and place of receiving bids. A contract
84 or lease for the operation of a solid waste disposal pro-
85 ject constructed and owned by the authority or an agree-
86 ment for cooperation in the acquisition or construction
87 of a solid waste disposal project pursuant to section six-
88 teen of this article is not subject to the foregoing re-
89 quirements and the authority may enter into such con-
90 tract or lease or such agreement pursuant to negoti-
91 ation and upon such terms and conditions and for such
92 period as it finds to be reasonable and proper under
93 the circumstances and in the best interests of proper
94 operation or of efficient acquisition or construction of
95 such project. The authority may reject any and all bids.
96 A bond with good and sufficient surety, approved by
97 the authority, shall be required of all contractors in an
98 amount equal to at least fifty percent of the contract
99 price, conditioned upon the faithful performance of the
100 contract.

101 (12) Employ managers, superintendents, engineers,
102 accountants, auditors and other employees, and retain
103 or contract with consulting engineers, financial con-
104 sultants, accounting experts, architects, attorneys and
105 such other consultants and independent contractors as
106 are necessary in its judgment to carry out the provisions
107 of this article, and fix the compensation or fees thereof.
108 All expenses thereof shall be payable solely from the
109 proceeds of solid waste disposal revenue bonds or notes
110 issued by the authority, from revenues and from funds
111 appropriated for such purpose by the Legislature.

112 (13) Receive and accept from any federal agency,
113 subject to the approval of the governor, grants for or
114 in aid of the construction of any solid waste disposal pro-
115 ject or for research and development with respect to
116 solid waste disposal projects and solid waste disposal
117 sheds and receive and accept from any source aid or
118 contributions of money, property, labor or other things
119 of value, to be held, used and applied only for the pur-

120 poses for which such grants and contributions are
121 made.

122 (14) Engage in research and development with respect
123 to solid waste disposal projects and solid waste disposal
124 sheds.

125 (15) Purchase fire and extended coverage and liability
126 insurance for any solid waste disposal projects and for
127 the principal office and suboffices of the authority, in-
128 surance protecting the authority and its officers and
129 employees against liability, if any, for damage to property
130 or injury to or death of persons arising from its oper-
131 ations and any other insurance the authority may agree
132 to provide under any resolution authorizing the issuance
133 of solid waste disposal revenue bonds or in any trust
134 agreement securing the same.

135 (16) Charge, alter and collect rentals and other
136 charges for the use or services of any solid waste dis-
137 posal project as provided in this article, and charge and
138 collect reasonable interest, fees and other charges in
139 connection with the making and servicing of loans to
140 governmental agencies in furtherance of the purposes
141 of this article.

142 (17) Establish or increase reserves from moneys re-
143 ceived or to be received by the authority to secure or to
144 pay the principal of and interest on the bonds and notes
145 issued by the authority pursuant to this article.

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

**§16-26-21. Financial interest in contracts, projects, etc., prohib-
ited; gratuities prohibited; penalty.**

1 No officer, member or employee of the authority may
2 be financially interested, directly or indirectly, in any
3 contract of any person with the authority, or in the sale
4 of any property, real or personal, to or by the authority.
5 This section does not apply to contracts or purchases of

6 property, real or personal, between the authority and any
7 governmental agency.

8 No officer, member or employee of the authority may
9 have or acquire any financial interest, either direct or
10 indirect, in any project or activity of the authority or in
11 any services or material to be used or furnished in con-
12 nection with any project or activity of the authority.
13 If an officer, member or employee of the authority has
14 any such interest at the time he becomes an officer,
15 member or employee of the authority, he shall disclose
16 and divest himself of it. Failure to do so shall be cause
17 for dismissal from the position he holds with the au-
18 thority.

19 This section does not apply in instances where a mem-
20 ber of the board who is a contract solid waste hauler
21 either seeks or has a financial interest, direct or indirect,
22 in any project or activity of the authority or in any
23 services or material to be used or furnished in connection
24 with any project or activity of the authority: *Provided,*
25 That that member shall fully disclose orally and in
26 writing to the board the nature and extent of any interest,
27 prior to any vote by the board which involves his interest,
28 withdraw from any deliberation or discussion by the
29 board of matters involving his interest, and refrain from
30 voting on any matter which directly or indirectly affects
31 him.

32 No officer, member or employee of the authority may
33 accept a gratuity from any person doing business with
34 the authority or from any person for the purpose of
35 gaining favor with the authority.

36 Any officer, member or employee of the authority who
37 has any financial interest prohibited by this section or
38 who fails to comply with its provisions is guilty of a
39 misdemeanor, and, upon conviction thereof, shall be fined
40 not more than one thousand dollars, or imprisoned in
41 the county jail not more than one year, or both fined
42 and imprisoned.

CHAPTER 120

(H. B. 1272—By Mr. Farley)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to authorizing state board of insurance to provide professional or other liability insurance coverage for all county board of education employees and members and for all employees and officers of the state department of corrections; specifying minimum amount of coverage; and requiring insurer to waive defense of governmental immunity.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a, to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5a Liability insurance for county board of education employees and members and for employees and officers of the state department of corrections.

1 In accordance with the provisions of this article, the state
2 board of insurance shall have authority to provide appropriate
3 professional or other liability insurance for all county board
4 of education teachers, supervisory and administrative staff
5 members, service personnel, auxiliary personnel and school
6 board members and for all employees and officers of the state
7 department of corrections. If provided, said insurance shall
8 cover any claim, demand, action, suit or judgment by reason
9 of alleged negligence or other acts resulting in bodily injury or
10 property damage to any person within or without any school
11 building or correctional institution if, at the time of the alleged
12 injury, the teacher, supervisor, administrator, service or auxil-
13 iary personnel employee, school board member, or employee
14 or officer of the department of corrections was acting in the

15 discharge of his duties, within the scope of his office, posi-
16 tion or employment, under the direction of the board of
17 education or commissioner of corrections or in an official
18 capacity as a school board member or as commissioner of cor-
19 rections. If provided, such insurance coverage shall be in an
20 amount to be determined by the state board of insurance, but
21 in no event less than one million dollars for each occurrence.

22 The insurance policy shall include comprehensive coverage,
23 personal injury coverage, malpractice coverage, corporal pun-
24 ishment coverage, legal liability coverage as well as a provi-
25 sion for the payment of the cost of attorney's fees in connec-
26 tion with any claim, demand, action, suit or judgment arising
27 from such alleged negligence or other act resulting in bodily
28 injury under the conditions specified in this section.

29 No policy or contract of liability insurance shall be pur-
30 chased as provided herein, unless it shall contain a provision
31 or endorsement whereby the company issuing such policy
32 waives, or agrees not to assert as a defense to any claim cov-
33 ered by the terms of such policy, the defense of governmental
34 immunity. In any action against a person covered by insur-
35 ance furnished pursuant to this section, when there is in effect
36 liability insurance coverage for such person in an amount
37 equal to or greater than the amount sued for, the attorney for
38 such person, the attorney for such insurance company, or any
39 other attorney who may appear on behalf of such person or
40 insurance company shall not set up the defense of govern-
41 mental immunity in any such action.

CHAPTER 121

(H. B. 954—Miss Shuman and Mr. Greer)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making those agencies subject to termination on July one, one thousand nine hundred

eighty, once again subject to termination, after proper review, on July one, one thousand nine hundred eighty-six; changing the termination date of certain agencies; and adding new agencies to be terminated.

Be it enacted by the Legislature of the West Virginia:

That section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall
2 be terminated on the date indicated but no governmental
3 entity or program shall be terminated under this article unless
4 a performance audit has been conducted of such entity or
5 program, except as authorized under section fourteen of this
6 article:

7 (1) On the first day of July, one thousand nine hun-
8 dred eighty-one: Commission on uniform state laws;
9 judicial council of West Virginia; geological and eco-
10 nomic survey commission; motor vehicle license certifi-
11 cate appeal board; child welfare licensing board; depart-
12 ment of labor.

13 (2) On the first day of July, one thousand nine hundred
14 eighty-two: Ohio River basin commission; Ohio River valley
15 water sanitation commission; commission on postmortem
16 examination; state commission on manpower, training and
17 technology; southern regional education board; department of
18 corrections.

19 (3) On the first day of July, one thousand nine hundred
20 eighty-three: Office of the workmen's compensation com-
21 missioner.

22 (4) On the first day of July, one thousand nine hundred
23 eighty-four: The following divisions of the programs of the
24 department of agriculture: Soil conservation committee, rural
25 resource division, meat inspection; and the following divisions
26 of programs of the department of natural resources: Water

27 resources, U. S. geological survey, rabies control, work incen-
28 tive program; West Virginia alcoholic beverage control licens-
29 ing advisory board; driver's licensing advisory board; oil and
30 gas inspectors' examining board.

31 (5) On the first day of July, one thousand nine hundred
32 eighty-five: Department of welfare.

33 (6) On the first day of July, one thousand nine hundred
34 eighty-six: Division of archives and history; state board of
35 insurance; interstate commission on the Potomac River basin.

CHAPTER 122

(S. B. 497—By Miss Herndon)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation of motor vehicle carriers; requiring taxation of two point transportation within this state in a continuation of interstate commerce on its net income.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

1 Every motor vehicle carrier operating on the public
2 highways of this state and every railroad car carrier,

3 railroad carrier, express company, pipeline company,
4 telephone and telegraph company, airline company and
5 any person operating a steamboat or other watercraft, for
6 the transportation of passengers or freight, doing business
7 in the state shall pay to the state an annual tax for each
8 calendar year. This tax shall be equal to the gross income
9 from all business beginning and ending within the state
10 multiplied by the respective rates as follows: Motor
11 vehicle carriers, railroad car carrier, railroad carrier,
12 express companies, pipeline companies, airline companies,
13 any person operating a steamboat or other watercraft and
14 telegraph companies, three and three-tenths percent, and
15 telephone companies, three and seventy-four one-hun-
16 dredths percent: *Provided*, That any motor vehicle carrier
17 which is an urban or suburban bus line shall be taxed
18 at the rate of one and sixty-five one-hundredths percent
19 of such gross income and any motor vehicle carrier which
20 is a taxi or cab company or a company which hauls
21 waste, refuse or garbage shall be taxed at the rate of
22 two and five-tenths percent of such gross income:
23 *Provided, however*, That a motor vehicle carrier which
24 transports goods within the state of West Virginia and
25 which received those goods as a connecting carrier in an
26 uninterrupted continuation of interstate transportation
27 done under the authority of a certificate of convenience
28 and necessity issued by the interstate commerce commis-
29 sion, shall be taxed pursuant to subdivision (a) of section
30 three of this article. This provision shall apply only to
31 the transportation of goods carried within the state with-
32 out a container change or warehousing.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

1 In addition to the tax imposed in the preceding section,
2 every motor vehicle carrier operating on the public high-
3 ways of the state and every railroad carrier, railroad
4 car carrier, express company, pipeline company, telephone
5 and telegraph company, airline company and any person
6 operating a steamboat or other watercraft for the trans-
7 portation of passengers or freight, doing business in this
8 state shall pay an annual tax for each calendar year

9 on the net income earned within the state equal to
10 three and seventy-four one-hundredths percent of such
11 net income for telephone companies and six and six-
12 tenths percent of such net income for all other carriers
13 included in this section: *Provided*, That any motor vehicle
14 carrier which is an urban or suburban bus line or a
15 taxi or cab company or a company which hauls waste,
16 refuse or garbage, five percent of such net income. Net
17 income shall be determined as follows:

18 (a) The net income of motor vehicle carriers earned
19 within the state including two point business in a con-
20 tinuation of interstate commerce without a container
21 change or warehousing shall be determined by ascertain-
22 ing a sum bearing the proportion to the total net income
23 of the motor vehicle carrier that its business done in
24 West Virginia measured in motor vehicle miles of motor
25 vehicle carrier operation, bears to all business done;

26 (b) The net income of railroad carriers earned within
27 the state shall be determined by ascertaining a sum bear-
28 ing the proportion to total net income of the carriers
29 that its business done in West Virginia, measured in ton-
30 miles, bears to all business done, measured in like
31 fashion;

32 (c) The net income of railroad car carriers and ex-
33 press companies earned within the state shall be de-
34 termined by ascertaining a sum bearing the proportion
35 to the total net income of the carriers or company that
36 its business done in West Virginia, measured in car-miles
37 of car operation, bears to all business done, measured in
38 like fashion: *Provided, however*, That nothing in this
39 article shall be construed as applying to railroad freight
40 car carriers not owned by railroad carriers or their
41 subsidiaries;

42 (d) The net income of pipeline companies earned
43 within the state shall be determined by ascertaining a
44 sum bearing the proportion to the total net income of
45 the company that its business done in West Virginia,
46 measured in barrel-miles in the case of oil and liquid
47 coal or slurry and of thousand cubic feet-miles in the

48 case of gas, bears to all business done, measured in like
49 fashion;

50 (e) The net income of airline companies and any
51 person operating a steamboat or other watercraft for the
52 transportation of passengers or freight earned within the
53 state shall be determined by ascertaining a sum bearing
54 the proportion to the total net income of the corporation
55 that its business done in West Virginia, measured in
56 passenger-miles in the case of airline companies and ton-
57 miles in the case of any person operating a steamboat or
58 other watercraft, bears to all business done, measured in
59 like fashion;

60 (f) The net income of telephone and telegraph com-
61 panies shall be determined by ascertaining a sum bearing
62 the proportion to the total net income of the companies
63 that its business done in West Virginia, measured in
64 wire-miles, bears to all business done, measured in like
65 fashion;

66 (g) In computing the tax imposed by this section, the
67 total net income of a taxpayer who shall have been taxed
68 under the preceding section shall be reduced by an
69 amount bearing the proportion to such total net income
70 that the gross income of the taxpayer which is the
71 measure of the tax under the preceding section bears to
72 its total gross income from all business done wherever
73 conducted. No county, city, town, village or other politi-
74 cal subdivision of the state shall levy a license, net
75 income or any other kind of tax on the business taxed
76 under this article.

CHAPTER 123

(H. B. 847—By Mr. Mathis)

[Passed March 8, 1980; in effect April 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections two-a and two-l, article thirteen, chapter eleven of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the business and occupation tax; specifying the classified status of persons exercising the privilege of severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products within the state; specifying and clarifying the measure of tax and values attributable to the exercise of such privilege by producers of coal under the coal classification; and requiring that counties with a population in excess of two hundred thousand expend at least fifty percent of county coal revenues within the coal producing areas of the county.

Be it enacted by the Legislature of West Virginia:

That sections two-a and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

§11-13-2l. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports, rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

1 Upon every person exercising the privilege of engaging
 2 or continuing within this state in the business of severing,
 3 extracting, reducing to possession and producing for sale,
 4 profit or commercial use any natural resource products, the
 5 amount of such tax to be equal to the value of the articles
 6 produced as shown by the gross proceeds derived from the
 7 sale thereof by the producer, except as otherwise provided,
 8 multiplied by the respective rates and in the classifications as
 9 follows:

10 (1) Coal, three and five-tenths percent. The value of
11 coal mined and produced in this state in the exercise of the
12 production privilege, taxable at the rates herein and in
13 section two-1 in conjunction with section two of this article,
14 shall include in addition to the value of the mined product
15 those values arising from the ordinary processing and pre-
16 paring of such coal for sale or commercial use, where such
17 processing and preparing are done by the producer of the
18 coal. Ordinary processing and preparing of coal activities
19 by the producer thereof are considered an integral part of
20 the production privilege and include crushing, washing, clean-
21 ing, drying, sorting, sizing, blending, loading for shipment
22 and the like applied in the ordinary mining of such products
23 to make the same salable and commercially usable. The
24 values taxable herein and attributable to such ordinary
25 processing and preparing of coal activities will not be again
26 taxable under the provisions of section two-b of this article
27 to the producer of such coal. The processing associated with
28 the production of all other natural resources referred to in this
29 section and more sophisticated processing and preparing of
30 coal activities shall be subject to the other applicable provisions
31 of this article.

32 (2) Limestone or sandstone, quarried or mined, two and
33 two-tenths percent.

34 (3) Oil, four and thirty-four one-hundredths percent.

35 (4) Natural gas, in excess of the value of five thousand
36 dollars, eight and sixty-three one-hundredths percent.

37 (5) Blast furnace slag, four and thirty-four one-hundredths
38 percent.

39 (6) Sand, gravel or other mineral product not quarried
40 or mined, four and thirty-four one-hundredths percent.

41 (7) Timber, two and two-tenths percent.

42 (8) Other natural resource products, two and eighty-six
43 one-hundredths percent.

44 The measure of this tax is the value of the entire pro-
45 duction in this state, regardless of the place of sale or the fact
46 that the delivery may be made to points outside the state.

47 For the purposes of the production of oil classification,
48 and the production of natural gas classification, as set forth
49 in this section, multiple coowners of oil or natural gas, in place,
50 lessees thereof, or others being vested with title and ownership
51 to part or all of the oil and gas, as personal property, im-
52 mediately after severance, extraction, reduction to possession
53 and production, except royalty recipients, in kind, shall be
54 deemed to be a "group or combination acting as a unit" and
55 one "person," as defined in section one of this article, if
56 not otherwise defined therein, whenever engaged in the busi-
57 ness of producing oil or natural gas through common use,
58 by joint or separately executed contracts, of the same inde-
59 pendent contractor driller or operator's services; and not-
60 withstanding provisions of private contracts for separate de-
61 posit of gross receipts in separate members' accounts or for
62 members of such group or combination to take in kind any
63 proportionate part of such natural resources.

64 Lessees, sublessees or other denominated lessees are con-
65 sidered to be producers of all of the oil or natural gas pro-
66 duced, regardless of any payment, in kind, to lessors, sub-
67 lessors or other denominated lessors of a part of such natural
68 resources as rents or royalties. Recipients of royalties or rents,
69 in kind, in cash or otherwise are taxable on their gross income
70 pursuant to the provisions of section two-i of this article.

**§11-13-21. Additional tax on the severance, extraction and pro-
duction of coal; dedication of additional tax for
benefit of counties and municipalities; distribution
of major portion of such additional tax to coal-
producing counties; distribution of minor portion of
such additional tax to all counties and municipalities;
reports, rules and regulations; creation of special
funds in office of state treasurer; method and formu-
las for distribution of such additional tax; (expendi-
ture of funds by counties and municipalities for
public purposes; creating special funds in counties
and municipalities; and requiring special county and
municipal budgets and reports thereon.)**

1 (a) Upon every person exercising the privilege of engaging
2 or continuing within this state in the business of severing,

3 extracting, reducing to possession and producing for sale,
4 profit or commercial use any coal, the amount of such tax
5 to be equal to the value of the coal produced as shown by
6 the gross proceeds derived from the sale thereof by the pro-
7 ducer, multiplied by thirty-five one hundredths of one percent,
8 and the tax imposed by section two of this article in conjunc-
9 tion with this subsection (a) shall be in addition to the tax
10 imposed by said section two in conjunction with section two-a
11 of this article, and the tax imposed by section two of this
12 article in conjunction with this subsection (a) is hereinafter
13 in this section referred to as "such additional tax." The
14 measure of such additional tax is the value of the entire
15 production in this state, regardless of the place of sale or the
16 fact that the delivery may be made to points outside the state.

17 (b) Such additional tax is imposed pursuant to the pro-
18 visions of section six-a, article ten of the West Virginia
19 constitution. Seventy-five percent of the net proceeds of such
20 additional tax shall, after appropriation thereof by the Legis-
21 lature, be distributed by the state treasurer to the various
22 counties in this state in which the coal upon which such addi-
23 tional tax is imposed was located at the time it was severed
24 from the ground, such counties being hereinafter in this section
25 referred to as the "coal-producing counties," and the remaining
26 twenty-five percent of the net proceeds of such additional tax
27 shall be distributed, after appropriation, among all the coun-
28 ties and municipalities of this state without regard to coal
29 having been produced therein)

30 (c) Such additional tax shall be due and payable, reported
31 and remitted as elsewhere provided in this article for the
32 tax imposed by said section two in conjunction with said sec-
33 tion two-a of this article and all of the enforcement and other
34 provisions of this article shall apply to such additional tax.
35 In addition to the reports and other information required under
36 the provisions of this article and the tonnage reports required
37 to be filed under the provisions of section seventy-two,
38 article two, chapter twenty-two of this code, the state tax
39 commissioner is hereby granted plenary power and authority
40 to promulgate reasonable rules and regulations requiring the
41 furnishing by producers of such additional information as may

42 be necessary to compute the allocation required under the
43 provisions of subsection (f) of this section. The state tax
44 commissioner is also hereby granted plenary power and author-
45 ity to promulgate such other reasonable rules and regulations
46 as may be necessary to implement the provisions of this
47 section.

48 (d) In order to provide a procedure for the distribution of
49 seventy-five percent of the net proceeds of such additional tax
50 to such coal-producing counties, there is hereby created in the
51 state treasurer's office a special fund to be known as the
52 "county coal revenue fund," and in order to provide a pro-
53 cedure for the distribution of the remaining twenty-five per-
54 cent of the net proceeds of such additional tax to all counties
55 and municipalities of the state, without regard to coal having
56 been produced therein, there is also hereby created in the
57 state treasurer's office a special fund to be known as the
58 "all counties and municipalities revenue fund."

59 Seventy-five percent of the net proceeds of such additional
60 tax shall be deposited in the "county coal revenue fund"
61 and twenty-five percent of such net proceeds shall be de-
62 posited in the "all counties and municipalities revenue fund,"
63 from time to time as such proceeds are received by the state
64 tax commissioner. The moneys in such funds shall, after
65 appropriation thereof by the Legislature, be distributed to the
66 respective counties and municipalities entitled thereto in the
67 manner set forth in subsection (e) of this section: *Provided*,
68 That those moneys heretofore received and maintained in a
69 separate account in the state treasurer's office, constituting
70 twenty-five percent of the net proceeds of such additional
71 tax received prior to the creation of the "all counties and
72 municipalities revenue fund" shall be transferred to such
73 fund and promptly distributed from such fund to all counties
74 and municipalities of this state according to their respective
75 entitlement.)

76 (e) (The moneys in the "county coal revenue fund" and the
77 moneys in the "all counties and municipalities revenue fund"
78 shall be allocated among and distributed quarterly to the
79 counties and municipalities entitled thereto by the state treas-
80 urer in the manner hereinafter specified.) On or before each

81 distribution date, the state treasurer shall determine the total
82 amount of moneys in each fund which will be available for
83 distribution (to the respective counties and municipalities en-
84 titled thereto on that distribution date. The amount to which
85 a coal-producing county is entitled from the "county coal
86 revenue fund" shall be determined in accordance with sub-
87 section (f) of this section, and the amount to which every
88 county and municipality shall be entitled from the "all coun-
89 ties and municipalities revenue fund" shall be determined in
90 accordance with subsection (g) of this section. After deter-
91 mining as set forth in subsection (f) and subsection (g) of this
92 section the amount each county and municipality is entitled
93 to receive from the respective fund or funds, a warrant of the
94 state auditor for the sum due to such county or municipality
95 shall issue and a check drawn thereon making payment of
96 such sum shall thereafter be distributed to such county or
97 municipality.)

98 (f) The amount to which a coal-producing county is en-
99 titled from the "county coal revenue fund" shall be determined
100 by) (i) dividing the total amount of moneys in such fund then
101 available for distribution by the total number of tons of coal
102 mined in this state during the preceding quarter, and (ii)
103 multiplying the quotient thus obtained by the number of tons
104 of coal removed from the ground in such county during the
105 preceding quarter.

106 (g) The amount to which each county and municipality
107 shall be entitled from the "all counties and municipalities
108 revenue fund" shall be determined in accordance with the
109 provisions of this subsection. For purposes of this subsection,
110 "population" shall mean the population as determined by the
111 most recent decennial census taken under the authority of the
112 United States.

113 The treasurer shall first apportion the total amount of
114 moneys available in the "all counties and municipalities reve-
115 nue fund" by multiplying the total amount in such fund by
116 the percentage which the population of each county bears
117 to the total population of the state. The amount thus appor-
118 tioned for each county shall be the county's "base share."

119 Each county's "base share" shall then be subdivided into
120 two portions. One portion shall be determined by multiply-
121 ing the "base share" by that percentage which the total
122 population of all unincorporated areas within the county bears
123 to the total population of the county, and the other portion
124 shall be determined by multiplying the "base share" by that
125 percentage which the total population of all municipalities
126 within the county bears to the total population of the county.
127 The former portion shall be paid to the county and the latter
128 portion shall be the "municipalities' portion" of the county's
129 "base share." The percentage of such latter portion to which
130 each municipality in the county is entitled shall be deter-
131 mined by multiplying the total of such latter portion by the
132 percentage which the population of each municipality within
133 the county bears to the total population of all municipalities
134 within the county.)

135 (h) All counties and municipalities shall create a "coal
136 severance tax revenue fund" which shall be the depository for
137 moneys distributed to any county or municipality under the
138 provisions of this section, from either or both special funds.
139 Moneys in such "coal severance tax revenue funds," in com-
140 pliance with subsection (i), may be expended by the county
141 commission or governing body of the municipality for such
142 public purposes as the county commission or governing body
143 shall determine to be in the best interest of the people of its
144 respective county or municipality: *Provided,* (That in counties
145 with population in excess of two hundred thousand at least
146 fifty percent of such funds received from the county coal
147 revenue fund shall be apportioned to, and expended within
148 the coal producing area or areas of the county, said coal
149 producing areas of each county to be determined generally
150 by the state tax commissioner: *Provided, however,* That a
151 line item budgeted amount from the current levy estimate for
152 a county shall be funded at one hundred percent of the
153 preceding year's expenditure from the county general fund
154 prior to the use of coal severance tax revenue fund moneys
155 for the same general purpose: *Provided further,* That said
156 coal severance tax revenue fund moneys shall not be budgeted

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157 for personal services in an amount to exceed one fourth of
158 the total funds available in such fund.

159 (i) On or before July fifteenth, one thousand nine hundred
160 seventy-six, each county commission or governing body of
161 a municipality receiving such revenue funds for fiscal year
162 one thousand nine hundred seventy-six—one thousand nine
163 hundred seventy-seven, shall budget the intended use of such
164 funds on forms provided by the state tax commissioner. Such
165 budget shall be followed unless the state tax commissioner
166 approves a subsequent amendment. On or before June fif-
167 teenth, one thousand nine hundred seventy-seven and each
168 June fifteenth thereafter, each county commission or governing
169 body receiving such revenue shall submit to the state tax
170 commissioner on forms provided by the state tax commissioner
171 a special budget, detailing how such revenue is to be spent
172 during the subsequent fiscal year. Such budget shall be fol-
173 lowed in expending such revenue unless a subsequent budget
174 is approved by the state tax commissioner. All unexpended
175 balances remaining in said special fund at the close of a fiscal
176 year shall be reappropriated to the budget for the subsequent
177 fiscal year. Such reappropriation shall be entered as an amend-
178 ment to the new budget and submitted to the tax commissioner
179 on or before July fifteenth of the current budget year.

180 (j) On or before December fifteenth, one thousand nine
181 hundred seventy-six, and each December fifteenth thereafter,
182 the state tax commissioner shall deliver to the clerk of the
183 Senate and the clerk of the House of Delegates a consolidated
184 report of the special budgets, created by subsection (i) of this
185 section, for all county commissions and municipalities as of
186 July fifteenth of the current year.

187 (k) The state tax commissioner shall retain for the benefit
188 of the state from the additional tax collected the amount of
189 thirty-five thousand dollars annually as a fee for the adminis-
190 tration of such additional tax by the state tax commissioner
191 and the distribution of the net proceeds thereof by the state
192 treasurer.

CHAPTER 124

(H. B. 1251—By Mr. Teets)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia gasoline and special fuels excise tax act; increasing the refund period from four to six months for certain off-highway uses of gasoline and special fuels; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That section eleven, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUELS EXCISE TAX.

§11-14-11. Refund of tax because of certain nonhighway uses; statute of limitations and effective date.

1 The tax imposed by this article shall be refunded to any
2 person who shall buy in quantities of twenty-five gallons or
3 more, at any one time, tax-paid gasoline or special fuel, when
4 consumed for the following purposes:

5 (1) As a special fuel for internal combustion engines
6 not operated upon highways of this state; or

7 (2) Gasoline consumed to operate tractors and gas engines
8 or threshing machines for agricultural purposes, when such
9 operation is not, in whole or in part, upon the highways of this
10 state; or

11 (3) Gasoline used by any railway company, subject to
12 regulation by the public service commission of West Virginia,
13 for any purpose other than upon the highways of this state;
14 or

15 (4) Gasoline consumed in the business of manufacturing

16 or producing natural resources or in mining or drilling there-
17 for, or in the transportation of natural resources solely by
18 means of unlicensed vehicles or vehicles licensed under the
19 motor vehicle laws of this state, either as a motor fuel or
20 for any other purpose and which gasoline is not in any part
21 used upon the highways of this state; or

22 (5) Gasoline consumed in motorboats or other watercraft
23 operated upon the navigable waters of this state.

24 Such tax shall be refunded upon presentation to the com-
25 missioner of an affidavit accompanied by the original or top
26 copy sales slips or invoices, or certified copies thereof, from
27 the distributor or producer or retail dealer, showing such
28 purchases, together with evidence of payment thereof, which
29 affidavit shall set forth the total amount of such gasoline or
30 special fuel purchased and consumed by such user, other than
31 upon any highways of this state, and how used; and the com-
32 missioner upon the receipt of such affidavit and such paid
33 sales slips or invoices shall cause to be refunded such tax
34 paid on gasoline or special fuel purchased and consumed as
35 aforesaid.

36 The right to receive any refund under the provisions of
37 this section shall not be assignable and any assignment thereof
38 shall be void and of no effect, nor shall any payment be made
39 to any person other than the original person entitled thereto
40 using gasoline or special fuel as hereinbefore in this section
41 set forth. The commissioner shall cause a refund to be made
42 under the authority of this section only when the claim for
43 such refund is filed with the commissioner, upon forms
44 prescribed by the commissioner, within six months from the
45 month of purchase or delivery of the gasoline or special
46 fuel, except that any application for refund made under
47 authority of subdivision (2) above shall be filed within twelve
48 months from the month of purchase or delivery of such gasoline
49 or special fuel. Any claim for a refund not timely filed shall
50 not be construed to be or constitute a moral obligation of the
51 state of West Virginia for payment. Such claim for refund shall
52 also be subject to the provisions of section fourteen, article
53 ten of this chapter.

54 *Effective date.*—The provisions of this section as hereby
55 amended shall apply to all gasoline and special fuels purchased
56 or delivered on or after the first day of July, one thousand
57 nine hundred eighty, and the provisions of this section in
58 effect prior to the said first day of July, shall apply to gasoline
59 and special fuels purchased or delivered prior to the first day
60 of July, one thousand nine hundred eighty.

CHAPTER 125

(H. B. 1224—By Mr. Tompkins and Mr. Polan)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section five, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the soft drinks tax; authorizing refund or credit to be made when the tax stamps or crowns or the soft drinks, powders or syrups upon which tax has been paid are destroyed by fire, lightning or flood or the soft drinks, powders or syrups upon which tax has been paid are exported from this state or are destroyed pursuant to a federal or state order; providing a statute of limitations on the filing of a claim for refund; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That section five, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5. Purchase of tax stamps or tax crowns; discounts and commissions; refunds and statute of limitations; effective date.

1 The commissioner is hereby authorized to promulgate rules
2 and regulations governing the design, purchase, sale and
3 distribution of tax stamps and tax crowns required by this

4 article. Manufacturers or distributors of crowns may be re-
5 quired to furnish bond to ensure faithful compliance with
6 such regulations. Any person desiring to purchase such
7 crowns shall obtain from the commissioner an authorization
8 to do so, which shall specify the number of crowns to be
9 purchased, and upon shipment thereof the manufacturer shall
10 transmit to the commissioner a copy of the invoice of such
11 shipment. The commissioner shall not authorize the purchase
12 of crowns by any person who is in default in the payment of
13 any tax required by this article.

14 The commissioner shall sell the stamps required by this
15 article, or may authorize any sheriff, or any bank or trust
16 company in this state, to sell such stamps as his deputy,
17 and may allow as a commission a fee of one half of one
18 percent of the face value of all stamps sold by such deputy.
19 In the sale of such stamps the commissioner shall allow the
20 following discounts: On a sale of less than twenty-five
21 dollars, no discount; on a sale of twenty-five dollars or over
22 and less than fifty dollars, a discount of five percent; and
23 on a sale of fifty dollars or more, a discount of ten percent.

24 In the case of stamps, the tax imposed by this article
25 shall be paid in advance at the time the stamps are purchased.
26 In the case of tax crowns, the tax shall be paid in advance
27 at the time the tax commissioner authorizes the purchase of
28 such tax crowns, unless the purchaser applies for and obtains
29 credit as provided in the following paragraph.

30 Whenever any person applies for an authorization to
31 purchase tax crowns, he may apply for an extension of credit
32 on the tax due with respect to such crowns, and if he files
33 a bond in the form prescribed by the commissioner, with
34 satisfactory corporate surety, in an amount not less than
35 twenty-five percent more than the tax due with respect to
36 the tax crowns to be purchased, the commissioner shall issue
37 the necessary authorization. Any person who obtains such
38 credit shall, on or before the fifteenth day of each month, file
39 with the commissioner on forms prescribed by him a return
40 stating the number of tax crowns used by such person during

41 the preceding month, and he shall at the same time pay to
42 the commissioner the tax due on the crowns so used.

43 The commissioner shall allow to each purchaser of tax
44 crowns, whether for cash or credit, a discount of twelve
45 and one half percent of the tax value of such crowns. Such
46 discount, and the discount allowed on the sale of tax stamps,
47 shall be in lieu of the allowance of any claim for refund by
48 reason of the breakage or destruction of containers stamped
49 or crowned as provided in this article, the spoilation of the
50 soft drinks or syrups, or the loss or destruction of tax
51 stamps or tax crowns. *Provided*, That when the tax stamps or
52 crowns or soft drinks, soft drink powders or soft drink syrups
53 upon which tax has been paid are destroyed by fire, lightning
54 or flood and when soft drinks, syrups or powders upon which
55 tax has been paid are exported from this state or are required
56 to be destroyed pursuant to federal or state order, the taxpayer
57 may file a claim for refund for an amount equal to the amount
58 of tax actually paid for such stamps or crowns. The commis-
59 sioner shall cause a refund to be made under this section only
60 when a claim for refund is filed within one hundred and eighty
61 days from the date the tax stamps or crowns were destroyed
62 or the soft drink product upon which tax was paid were de-
63 stroyed or exported from this state. Any claim for refund not
64 timely filed shall not be construed to be or to constitute a
65 moral obligation of this state for payment. Such claim for re-
66 fund shall also be subject to the provisions of section fourteen,
67 article ten of this chapter. At the election of the taxpayer, the
68 amount of any refund may be established as a credit. The
69 amount refunded or credited under this section shall not be
70 subject to the interest provisions of subsection (d), section
71 seventeen, article ten of this chapter.

72 *Effective date.*—The provisions of this section as hereby
73 amended shall apply to soft drinks tax stamps or crowns de-
74 stroyed on or after the first day of July, one thousand nine
75 hundred eighty, and to soft drinks, powders and syrups ex-
76 ported or destroyed on or after the first day of said July. The
77 provisions of this section in effect prior to the said first day
78 of July shall apply to tax stamps, crowns and soft drinks,
79 powders and syrups destroyed or exported prior to said date.

CHAPTER 126

(H. B. 1140—By Mr. Speaker, Mr. See)

[Passed February 12, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

That section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article
5 to the laws of the United States shall mean the provisions
6 of the Internal Revenue Code of 1954, as amended, and
7 such other provisions of the laws of the United States as
8 relate to the determination of income for federal income tax
9 purposes. All amendments made to the laws of the United
10 States prior to the first day of January, one thousand nine
11 hundred eighty, shall be given effect in determining the
12 taxes imposed by this article for the tax period beginning
13 the first day of January, one thousand nine hundred eighty,
14 and thereafter, but no amendment to the laws of the United
15 States made on or after the first day of January, one thousand
16 nine hundred eighty, shall be given effect.

CHAPTER 127

(H. B. 1384—By Mr. Polan)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Personal Income Tax and modifications which increase or reduce federal adjusted gross income thereunder in determination of the state adjusted gross income of resident individuals; providing a reduction modification which exempts retirement income received from any police or firemen's retirement system, including any survivorship annuities thereunder; providing a maximum exemption allowable to persons who attain the age of sixty-five during the taxable year of eight thousand dollars annually, with such exemption to be applicable to adjusted gross income from any source and with the surviving spouse of any such person being entitled to such exemption; providing a reduction modification granting a maximum exemption of eight thousand dollars annually to persons permanently and totally disabled, regardless of age, as certified by proper authority during the taxable year, with such exemption being applicable to adjusted gross income received from any source, and with the surviving spouse of such person being entitled to such exemption; providing a conforming adjustment in the reduction modification which exempts certain military pay and allowances income relating to active service in the armed forces by West Virginia residents by limiting such exemption to persons under the age of sixty-five; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.*—The West Virginia adjusted gross income

2 of a resident individual means his federal adjusted gross in-
3 come as defined in the laws of the United States for the
4 taxable year with the modifications specified in this section.

5 (b) *Modifications increasing federal adjusted gross income.*
6 —There shall be added to federal adjusted gross income:

7 (1) Interest income on obligations of any state other than
8 this state, or of a political subdivision of any such other state
9 unless created by compact or agreement to which this state
10 is a party;

11 (2) Interest or dividend income on obligations or securities
12 of any authority, commission or instrumentality of the United
13 States, which the laws of the United States exempt from
14 federal income tax but not from state income taxes;

15 (3) Income taxes imposed by this state or any other
16 taxing jurisdiction, to the extent deductible in determining
17 federal adjusted gross income and not credited against federal
18 income tax; and

19 (4) Interest on indebtedness incurred or continued to
20 purchase or carry obligations or securities the income from
21 which is exempt from tax under this article, to the
22 extent deductible in determining federal adjusted gross
23 income.

24 (c) *Modifications reducing federal adjusted gross income.*
25 —There shall be subtracted from federal adjusted gross income:

26 (1) Interest income on obligations of the United States
27 and its possessions to the extent includible in gross income
28 for federal income tax purposes;

29 (2) Interest or dividend income on obligations or secur-
30 ities of any authority, commission or instrumentality of the
31 United States to the extent includible in gross income for
32 federal income tax purposes but exempt from state income
33 taxes under the laws of the United States;

34 (3) Any gain from the sale or other disposition of prop-
35 erty having a higher fair market value on the first day of Jan-
36 uary, one thousand nine hundred sixty-one, than the adjusted
37 basis at said date for federal income tax purposes: *Provided,*

38 That the amount of this adjustment is limited to that portion
39 of any such gain which does not exceed the difference between
40 such fair market value and such adjusted basis: *Provided*,
41 *however*, That if such gain is considered a long-term capital
42 gain for federal income tax purposes, the modification shall
43 be limited to fifty per centum of such portion of the gain;

44 (4) The amount of any refund or credit for overpayment
45 of income taxes imposed by this state, or any other taxing
46 jurisdiction, to the extent properly included in gross income
47 for federal income tax purposes;

48 (5) Annuities, retirement allowances, returns of contri-
49 butions and any other benefit received under the public em-
50 ployees retirement system, the department of public safety
51 death, disability and retirement fund, the state teachers retire-
52 ment system, and all forms of military retirement, including
53 regular armed forces, reserves and national guard, including
54 any survivorship annuities derived therefrom, to the extent in-
55 cludible in gross income for federal income tax purposes;

56 (6) Retirement income received in the form of pensions and
57 annuities after the thirty-first day of December, one thousand
58 nine hundred seventy-nine, under any police or firemen's retire-
59 ment system, including any survivorship annuities derived
60 therefrom, to the extent includible in gross income for federal
61 income tax purposes;

62 (7) Federal adjusted gross income in the amount of eight
63 thousand dollars received from any source after the thirty-first
64 day of December, one thousand nine hundred seventy-nine, by
65 any person who has attained the age of sixty-five on or be-
66 fore the last day of the taxable year, or by any person certi-
67 fied by proper authority as permanently and totally disabled,
68 regardless of age, on or before the last day of the taxable year,
69 to the extent includible in federal adjusted gross income for
70 federal tax purposes: *Provided*, That

71 (i) Where the total modification under subdivisions (1), (2),
72 (5) and (6) of this subsection is eight thousand dollars per
73 person or more, no deduction shall be allowed under this sub-
74 division, and

75 (ii) Where the total modification under subdivisions (1),
76 (2), (5) and (6) of this subsection is less than eight thousand
77 dollars per person, the total modification allowed under this
78 subdivision for all gross income received by such person shall
79 be limited to the difference between eight thousand dollars and
80 the sum of modifications under such subdivisions;

81 (8) Federal adjusted gross income in the amount of eight
82 thousand dollars received from any source after the thirty-first
83 day of December, one thousand nine hundred seventy-nine,
84 by the surviving spouse of any person who had attained the
85 age of sixty-five or who had been certified as permanently and
86 totally disabled, to the extent includible in federal adjusted
87 gross income for federal tax purposes: *Provided, That*

88 (i) Where the total modification under subdivisions (1), (2),
89 (5), (6) and (7) of this subsection is eight thousand dollars or
90 more, no deduction shall be allowed under this subdivision,
91 and

92 (ii) Where the total modification under subdivisions (1),
93 (2), (5), (6) and (7) of this subsection is less than eight thou-
94 sand dollars per person the total modification allowed under
95 this subdivision for all gross income received by such person
96 shall be limited to the difference between eight thousand dol-
97 lars and the sum of such subdivisions; and

98 (9) Any pay or allowances received after the thirty-first
99 day of December, one thousand nine hundred seventy-nine, by
100 West Virginia residents who have not attained the age of sixty-
101 five as compensation for active service in the armed forces of
102 the United States: *Provided, That* such deduction shall be
103 limited to an amount not to exceed four thousand dollars.

104 (d) *Modification for West Virginia fiduciary adjustment.*—
105 There shall be added to or subtracted from federal adjusted
106 gross income, as the case may be, the taxpayer's share, as bene-
107 ficiary of an estate or trust, of the West Virginia fiduciary ad-
108 justment determined under section nineteen of this article.

109 (e) *Partners.*—The amounts of modifications required to
110 be made under this section by a partner, which relate to items
111 of income, gain, loss or deduction of a partnership, shall be
112 determined under section seventeen of this article.

113 (f) *Husband and wife*.—If husband and wife determine
114 their federal income tax on a joint return but determine their
115 West Virginia income taxes separately, they shall determine
116 their West Virginia adjusted gross incomes separately as if
117 their federal adjusted gross incomes had been determined
118 separately.

CHAPTER 128

(H. B. 1141—By Mr. Speaker, Mr. See)

[Passed February 12, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms.

1 (a) *General*.—Any term used in this article shall have
2 the same meaning as when used in a comparable context in
3 the laws of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the con-
5 text or by definition in this article. Any reference in this
6 article to the laws of the United States or to the Internal
7 Revenue Code or to the federal income tax law shall mean
8 the provisions of the laws of the United States as relate to
9 the determination of income for federal income tax purposes.
10 All amendments made to the laws of the United States
11 prior to the first day of January, one thousand nine hundred

12 eighty, shall be given effect in determining the taxes imposed
13 by this article for the tax period beginning the first day of
14 January, one thousand nine hundred eighty, and thereafter,
15 but no amendment to laws of the United States made on or
16 after the first day of January, one thousand nine hundred
17 eighty, shall be given effect.

18 (b) *Certain terms defined.*—For purposes of this article:

19 (1) The term “tax commissioner” means the tax com-
20 missioner of the state of West Virginia or his delegate.

21 (2) The term “corporation” means and includes a joint-
22 stock company or any association which is taxable as a
23 corporation under the federal income tax law.

24 (3) The term “domestic corporation” means any corpora-
25 tion organized under the laws of West Virginia.

26 (4) The term “foreign corporation” means any corporation
27 other than a domestic corporation.

28 (5) The term “state” means any state of the United
29 States, the District of Columbia, the Commonwealth of Puerto
30 Rico, any territory or possession of the United States, and
31 any foreign country or political subdivision thereof.

32 (6) The term “taxable year” means the taxable year for
33 which the taxable income of the taxpayer is computed under
34 the federal income tax law.

35 (7) The term “taxpayer” means a corporation subject to
36 the tax imposed by this article.

37 (8) The term “tax” includes, within its meaning, interest
38 and penalties unless the intention to give it a more limited
39 meaning is disclosed by the context.

40 (9) The term “commercial domicile” means the principal
41 place from which the trade or business of the taxpayer is
42 directed or managed.

43 (10) The term “compensation” means wages, salaries,
44 commissions and any form of remuneration paid to employees
45 for personal services.

46 (11) The term "West Virginia taxable income" means the
47 taxable income of a corporation as defined by the laws of
48 the United States for federal income tax purposes, adjusted
49 as provided in section six of this article: *Provided*, That in the
50 case of a corporation having income from business activity
51 which is taxable without this state, its "West Virginia taxable
52 income" shall be such portion of its taxable income as so de-
53 fined and adjusted as is allocated or apportioned to this state
54 under the provisions of section seven of this article.

55 (12) The term "business income" means income arising
56 from transactions and activity in the regular course of the
57 taxpayer's trade or business and includes income from tangible
58 and intangible property if the acquisition and disposition
59 of the property constitute integral parts of the taxpayer's
60 regular trade or business operations.

61 (13) The term "nonbusiness income" means all income
62 other than business income.

63 (14) The term "public utility" means any business activity
64 to which the jurisdiction of the public service commission of
65 West Virginia extends under section one, article two, chapter
66 twenty-four of the code of West Virginia.

67 (15) The term "this code" means the code of West Vir-
68 ginia, one thousand nine hundred thirty-one, as amended.

69 (16) The term "this state" means the state of West
70 Virginia.

CHAPTER 129

(Com. Sub. for H. B. 788—By Mr. Christian and Mr. Greer)

[Passed February 6, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-six-b, relating to the enactment of the uniform condominium act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes;

eminent domain; supplemental general principles of law applicable; construction against implicit repeal; uniformity of application and construction; severability; unconscionable agreement or term of contract; obligation of good faith; remedies to be liberally administered; creation of condominium; unit boundaries; construction and validity of declaration and bylaws; description of units; contents of declaration, all condominiums; contents of declaration, flexible condominiums; leasehold condominiums; allocation of common element interests, votes and common expense liabilities; limited common elements; plats and plans; conversion and expansion of flexible condominiums; withdrawal of withdrawable real estate; alterations of units; relocation of boundaries between adjoining units; subdivision or conversion of units; interpretation of deeds; use for sales purposes; easement to facilitate completion, conversion and expansion; amendment of declaration; termination of condominium; rights of secured lenders; organization of unit owners' association; powers of unit owners' association; executive board members and officers; transfer of special declarant rights; termination of contracts and leases of declarant; bylaws; upkeep of the condominium; meetings; quorums; voting, proxies; tort and contract liability; insurance; surplus funds; assessments for common expenses; lien for assessments; association records; association as trustee; applicability, waiver; public offering statement, general provisions; same, time-share estates; same, conversion condominiums; same, condominium securities; purchaser's right to cancel; resales of units; escrow of deposits; release of liens; conversion condominiums; warranty against structural defects; statute of limitations for warranties; effect of violation on rights of action, attorney's fees; labeling of promotional material; declarant's obligation to complete and restore.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter thirty-six-b, to read as follows:

CHAPTER 36B. UNIFORM CONDOMINIUM ACT.

Article

- 1. General Provisions.**
- 2. Creation, Alterations and Termination of Condominiums.**

3. Management of the Condominium.
4. Protection of Purchasers.

ARTICLE 1. GENERAL PROVISIONS.

- §36B-1-101. Short title.
- §36B-1-102. Applicability.
- §36B-1-103. Definitions.
- §36B-1-104. Variation by agreement.
- §36B-1-105. Separate titles and taxation.
- §36B-1-106. Applicability of local ordinances, regulations and building codes.
- §36B-1-107. Eminent domain.
- §36B-1-108. Supplemental general principles of law applicable.
- §36B-1-109. Construction against implicit repeal.
- §36B-1-110. Uniformity of application and construction.
- §36B-1-111. Severability.
- §36B-1-112. Unconscionable agreement or term of contract.
- §36B-1-113. Obligation of good faith.
- §36B-1-114. Remedies to be liberally administered.

§36B-1-101. Short title.

- 1 This chapter shall be known and may be cited as the
- 2 "Uniform Condominium Act."

§36B-1-102. Applicability.

- 1 (a) This chapter applies to all condominiums created
- 2 within this state after the effective date of this chapter.
- 3 Sections 1-105 (separate titles and taxation), 1-106 (ap-
- 4 plicability of local ordinances, regulations, and building codes),
- 5 1-107 (eminent domain), 2-103 (construction and validity of
- 6 declaration and bylaws), 2-104 (description of units),
- 7 3-102(a) (1) through (6) and (11) through (16) (powers
- 8 of unit owners' association), 3-111 (tort and contract liability),
- 9 3-115 (lien for assessments), 3-116 (association records), 4-
- 10 107 (resales of units), and 4-113 (effect of violation on rights
- 11 of action; attorney's fees), and section 1-103 (definitions)
- 12 to the extent necessary in construing any of those sections,
- 13 apply to all condominiums created in this state before the
- 14 effective date of this chapter; but those sections apply only
- 15 with respect to events and circumstances occurring after the
- 16 effective date of this chapter and do not invalidate existing
- 17 provisions of the declaration, bylaws, or plats or plans of those
- 18 condominiums.

19 (b) The provisions of chapter one hundred fifty-three,
20 acts of the Legislature, one thousand nine hundred sixty-
21 three, do not apply to condominiums created after the effective
22 date of this chapter and do not invalidate any amendment to
23 the declaration, rules, bylaws, plats and plans and code of
24 regulations of any condominium created before the effective
25 date of this chapter if the amendment would be permitted
26 by this chapter. The amendment must be adopted in con-
27 formity with the procedures and requirements specified by
28 those instruments and by chapter one hundred fifty-three,
29 acts of the Legislature, one thousand nine hundred sixty-
30 three. If the amendment grants to any person any rights,
31 powers, or privileges permitted by this chapter, all correla-
32 tive obligations, liabilities, and restrictions in this chapter
33 also apply to that person.

34 (c) This chapter does not apply to condominiums or units
35 located outside this state, but the public offering statement
36 provisions (sections 4-102 through 4-105) apply to all dis-
37 positions thereof in this state unless exempt under section
38 4-101(b) (5).

39 (d) The provisions of this chapter shall apply to all con-
40 dominiums to the extent such provisions conflict or are
41 inconsistent with the provisions of chapter one hundred fifty-
42 three, acts of the Legislature, one thousand nine hundred sixty-
43 three: *Provided*, That the provisions of this chapter shall not
44 modify, limit, or nullify any rights, duties, or obligations created
45 or existing under any declaration, by laws, or plats or plans, of
46 condominiums created in this state before the effective date
47 of this chapter.

§36B-1-103. Definitions.

1 In the declaration and bylaws, unless specifically provided
2 otherwise or the context otherwise requires, and in this chapter:

3 (1) "Additional real estate" means real estate that may
4 be added to a flexible condominium.

5 (2) "Affiliate of a declarant" means any person who con-
6 trols, is controlled by, or is under common control with a
7 declarant. A person "controls" a declarant if the person (i) is

8 a general partner, officer, director, or employee of the declarant,
9 (ii) directly or indirectly or acting in concert with one
10 or more other persons, or through one or more subsidiaries,
11 owns, controls, holds with power to vote, or holds proxies
12 representing, more than twenty percent of the voting interests
13 of the declarant, (iii) controls in any manner the election of a
14 majority of the directors of the declarant, or (iv) has contributed
15 more than twenty percent of the capital of the declarant. A person
16 "is controlled by" a declarant if the declarant
17 (i) is a general partner, officer, director, or employee of the
18 person, (ii) directly or indirectly or acting in concert with
19 one or more other persons, or through one or more subsidiaries,
20 owns, controls, holds with power to vote, or holds
21 proxies representing, more than twenty percent of the voting
22 interests of the person, (iii) controls in any manner the
23 election of a majority of the directors of the person, or
24 (iv) has contributed more than twenty percent of the capital
25 of the person.

26 (3) "Association" or "unit owners' association" means the
27 unit owners' association organized under section 3-101.

28 (4) "Common elements" means all portions of a condominium
29 other than the units.

30 (5) "Common expenses" means expenditures made or
31 liabilities incurred by or on behalf of the association, together
32 with any allocations to reserves.

33 (6) "Common expense liability" means the liability for
34 common expenses allocated to each unit pursuant to section
35 2-108.

36 (7) "Condominium" means real estate, portions of which
37 are designated for separate ownership and the remainder of
38 which is designated for common ownership solely by the
39 owners of those portions. Real estate is not a condominium
40 unless the undivided interests in the common elements are
41 vested in the unit owners.

42 (8) "Conversion condominium" means a condominium containing
43 any building that at any time before recording of
44 the declaration was occupied wholly or partially by persons

45 other than purchasers and persons who occupy with the
46 consent of purchasers.

47 (9) "Convertible real estate" means a portion of a flexi-
48 ble condominium not within a building containing a unit,
49 within which additional units or limited common elements,
50 or both, may be created.

51 (10) "Declarant" means:

52 (i) if the condominium has been created, (A) any person
53 who has executed a declaration, or an amendment to a
54 declaration to add additional real estate, other than persons
55 holding interests in the real estate solely as security for an
56 obligation, persons whose interest in the real estate will not
57 be conveyed to unit owners, or, in the case of a leasehold
58 condominium, a lessor who possesses no special declarant
59 rights and who is not an affiliate of a declarant who possesses
60 special declarant rights, or (B) any person who succeeds under
61 section 3-104 to any special declarant rights, or

62 (ii) if the condominium has not yet been created, any
63 person who offers to dispose of or disposes of his interest in
64 a unit not previously disposed of.

65 (11) "Dispose" or "disposition" means a voluntary trans-
66 fer of any legal or equitable interest in a unit, other than
67 as security for an obligation.

68 (12) "Executive board" means the body, regardless of
69 name, designated in the declaration to act on behalf of the
70 association.

71 (13) "Flexible condominium" means a condominium con-
72 taining withdrawable or convertible real estate, a condo-
73 minium to which additional real estate may be added, or a
74 combination thereof.

75 (14) "Identifying number" means a symbol that identifies
76 only one unit in a condominium.

77 (15) "Leasehold condominium" means a condominium in
78 which all or a portion of the real estate is subject to a lease
79 the expiration or termination of which will terminate the
80 condominium or reduce its size.

81 (16) "Limited common element" means a portion of the
82 common elements allocated by the declaration or by operation
83 of section 2-102(2) or (4) for the exclusive use of one or
84 more but fewer than all of the units.

85 (17) "Mortgage" means either a mortgage or a deed of
86 trust.

87 (18) "Offering" means any advertisement, inducement,
88 solicitation, or attempt to encourage any person to acquire
89 any interest in a unit, other than as security for an obligation.
90 An advertisement in a newspaper or other periodical of
91 general circulation, or in any broadcast medium to the gen-
92 eral public, of a condominium not located in this state, is
93 not an offering if the advertisement states that an offering
94 may be made only in compliance with the law of the jurisdic-
95 tion in which the condominium is located.

96 (19) "Person" means a natural person, corporation,
97 partnership, association, trust, other entity, or any combina-
98 tion thereof.

99 (20) "Purchaser" means any person, other than a de-
100 clarant, who by means of a voluntary transfer acquires a
101 legal or equitable interest in a unit, other than (i) a lease-
102 hold interest (including renewal options) of less than five
103 years, or (ii) as security for an obligation.

104 (21) "Real estate" means any leasehold or other estate
105 or interest in, over, or under land, including structures,
106 fixtures, and other improvements and interests which by
107 custom, usage, or law pass with a conveyance of land though
108 not described in the contract of sale or instrument of con-
109 veyance. "Real estate" includes parcels with or without upper
110 or lower boundaries, and spaces that may be filled with air
111 or water.

112 (22) "Special declarant rights" means rights reserved for
113 the benefit of a declarant to complete improvements indi-
114 cated on plats and plans filed with the declaration (section
115 2-110); to convert convertible real estate in a flexible con-
116 dominium (section 2-111); to add additional real estate to
117 a flexible condominium (section 2-111); to withdraw with-

118 drawable real estate from a flexible condominium (section
119 2-112); to convert a unit into two or more units, common
120 elements, or into two or more units and common elements
121 (section 2-115); to maintain sales offices, management offices,
122 signs advertising the condominium, and models (section 2-
123 117); to use easements through the common elements for the
124 purpose of making improvements within the condominium
125 or within any convertible or additional real estate (section 2-
126 118); or to appoint or remove any officer of the association
127 or any executive board member during any period of de-
128 clarant control (section 3-103(c)).

129 (23) "Unit" means a portion of the condominium desig-
130 nated for separate ownership, the boundaries of which are
131 described pursuant to section 2-105 (4).

132 (24) "Unit owner" means a declarant who owns a unit, a
133 person to whom ownership of a unit has been conveyed, or a
134 lessee of a unit in a leasehold condominium whose lease
135 expires simultaneously with any lease the expiration or termi-
136 nation of which will remove the unit from the condominium,
137 but does not include a person having an interest in a unit
138 solely as security for an obligation.

139 (25) "Withdrawable real estate" means real estate that
140 may be withdrawn from a flexible condominium.

§36B-1-104. Variation by agreement.

1 Except as expressly provided in this chapter, provisions
2 of this chapter may not be varied by agreement, and rights
3 conferred by this chapter may not be waived. A declarant
4 may not act under a power of attorney, or use any other
5 device, to evade the limitations or prohibitions of this chapter
6 or the declaration.

§36B-1-105. Separate titles and taxation.

1 (a) Except as provided in subsection (b), each unit to-
2 gether with its common element interest constitutes for all
3 purposes a separate parcel of real estate.

4 (b) If there is a unit owner other than a declarant,
5 each unit together with its common element interest, but

6 excluding its common element interest in convertible or
7 withdrawable real estate, shall be separately taxed and assessed,
8 and each portion of any convertible or withdrawable real
9 estate shall be separately taxed and assessed; otherwise, the
10 real estate comprising the condominium may be taxed and
11 assessed in any manner provided by law.

§36B-1-106. Applicability of local ordinances, regulations and building codes.

1 A zoning, subdivision, building code, or other real estate
2 use law, ordinance, or regulation may not prohibit the
3 condominium form of ownership or impose any requirement
4 upon a condominium which it would not impose upon a
5 physically identical development under a different form of
6 ownership. Otherwise, no provision of this chapter invalidates
7 or modifies any provision of any zoning, subdivision, building
8 code, or other real estate use law, ordinance, or regulation.

§36B-1-107. Eminent domain.

1 (a) If a unit is acquired by eminent domain, or if part
2 of a unit is acquired by eminent domain leaving the unit
3 owner with a remnant which may not practically or lawfully
4 be used for any purpose permitted by the declaration, the
5 award must compensate the unit owner for his unit and its
6 common element interest, whether or not any common element
7 interest is acquired. Upon acquisition, unless the decree
8 otherwise provides, that unit's entire common element interest,
9 votes in the association, and common expense liability are
10 automatically reallocated to the remaining units in pro-
11 portion to the respective interests, votes, and liabilities of
12 those units before the taking, and the association shall
13 promptly prepare, execute, and record an amendment to
14 the declaration reflecting the reallocations. Any remnant of
15 a unit remaining after part of a unit is taken under this
16 subsection is thereafter a common element.

17 (b) Except as provided in subsection (a), if part of a
18 unit is acquired by eminent domain, the award must
19 compensate the unit owner for the reduction in value of the
20 unit and its common element interest. Upon acquisition, (1)
21 that unit's common element interest, votes in the associa-

22 tion, and common expense liability are reduced in propor-
23 tion to the reduction in the size of the unit, or on any
24 other basis specified in the declaration, and (2) the portion
25 of common element interest, votes, and common expense
26 liability divested from the partially acquired unit are auto-
27 matically reallocated to that unit and the remaining units
28 in proportion to the respective interests, votes, and liabilities
29 of those units before the taking, with the partially acquired
30 unit participating in the reallocation on the basis of its
31 reduced interests, votes, and liabilities.

32 (c) If part of the common elements is acquired by emi-
33 nent domain, the award must be paid to the association.
34 The association shall divide any portion of the award not
35 used for any restoration or repair of the remaining common
36 elements among the unit owners in proportion to their re-
37 spective common element interests before the taking, but
38 the portion of the award attributable to the acquisition of
39 a limited common element must be equally divided among the
40 owners of the units to which that limited common element was
41 allocated at the time of acquisition, or in any manner the
42 declaration provides.

43 (d) If the acquisition of common elements or the acqui-
44 sition of certain units decreases the value of the remaining
45 units by more than a de minimus amount, the award must
46 include an amount to all remaining unit owners sufficient
47 to compensate them for that decrease in value. For pur-
48 poses of this subsection the entity authorized to exercise the
49 right of eminent domain must give notice to all unit owners
50 and holders of liens on units in the manner set forth in sec-
51 tion three, article two, chapter fifty-four of this code, or by
52 certified or registered mail, return receipt requested.

53 (e) The court decree shall be recorded in every county
54 in which any portion of the condominium is located.

§36B-1-108. Supplemental general principles of law applicable.

1 The principles of law and equity, including the law of
2 corporations and unincorporated associations, the law of
3 real property and the law relative to capacity to contract,
4 principal and agent, eminent domain, estoppel, fraud, mis-

5 representation, duress, coercion, mistake, receivership, sub-
6 stantial performance, or other validating or invalidating cause
7 supplement the provisions of this chapter, except to the
8 extent inconsistent with this chapter.

§36B-1-109. Construction against implicit repeal.

1 This chapter being a general act intended as a unified
2 coverage of its subject matter, no part of it shall be construed
3 to be impliedly repealed by subsequent legislation if that
4 construction can reasonably be avoided.

§36B-1-110. Uniformity of application and construction.

1 This chapter shall be applied and construed so as to effectuate
2 its general purpose to make uniform the law with respect to
3 the subject of this chapter among states enacting it.

§36B-1-111. Severability.

1 If any provision of this chapter or the application thereof
2 to any person or circumstances is held invalid, the invalidity
3 does not affect other provisions or applications of this chapter
4 which can be given effect without the invalid provisions or
5 application, and to this end the provisions of this chapter
6 are severable.

§36B-1-112. Unconscionable agreement or term of contract.

1 (a) The court, upon finding as a matter of law that a
2 contract or contract clause was unconscionable at the time
3 the contract was made, may refuse to enforce the contract,
4 enforce the remainder of the contract without the unconscionable
5 clause, or limit the application of any unconscionable
6 clause in order to avoid an unconscionable result.

7 (b) Whenever it is claimed, or appears to the court, that
8 a contract or any contract clause is or may be unconscionable,
9 the parties, in order to aid the court in making the
10 determination, shall be afforded a reasonable opportunity to
11 present evidence as to:

12 (1) The commercial setting of the negotiations;

13 (2) Whether a party has knowingly taken advantage of the
14 inability of the other party reasonably to protect his interests

15 by reason of physical or mental infirmity, illiteracy, or in-
16 ability to understand the language of the agreement or similar
17 factors;

18 (3) The effect and purpose of the contract or clause; and

19 (4) If a sale, any gross disparity, at the time of
20 contracting, between the amount charged for the real estate
21 and the value of the real estate measured by the price at
22 which similar real estate was readily obtainable in similar
23 transactions, but a disparity between the contract price and
24 the value of the real estate measured by the price at which
25 similar real estate was readily obtainable in similar
26 transactions does not, of itself, render the contract uncon-
27 scionable.

§36B-1-113. Obligation of good faith.

1 Every contract or duty governed by this chapter imposes
2 an obligation of good faith in its performance or enforcement.

§36B-1-114. Remedies to be liberally administered.

1 (a) The remedies provided by this chapter shall be liber-
2 ally administered to the end that the aggrieved party is put in a
3 good a position as if the other party had fully performed.
4 However, consequential, special, or punitive damages may not
5 be awarded except as specifically provided in this chapter or
6 by other rule of law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by judicial proceeding.

**ARTICLE 2. CREATION, ALTERATIONS AND TERMINATION OF
CONDOMINIUMS.**

§36B-2-101. Creation of condominium.

§36B-2-102. Unit boundaries.

§36B-2-103. Construction and validity of declaration and bylaws.

§36B-2-104. Description of units.

§36B-2-105. Contents of declaration; all condominiums.

§36B-2-106. Same—Flexible condominiums.

§36B-2-107. Same—Leasehold condominiums.

§36B-2-108. Allocation of common element interests, rates and common
expense liabilities.

§36B-2-109. Limited common elements.

- §36B-2-110. Plats and plans.
- §36B-2-111. Conversion and expansion of flexible condominiums.
- §36B-2-112. Withdrawal of withdrawable real estate.
- §36B-2-113. Alterations of units.
- §36B-2-114. Relocation of boundaries between adjoining units.
- §36B-2-115. Subdivision or conversion of units.
- §36B-2-116. Interpretation of deeds.
- §36B-2-117. Use for sales purposes.
- §36B-2-118. Easement to facilitate completion, conversion and expansion.
- §36B-2-119. Amendment of declaration.
- §36B-2-120. Termination of condominium.
- §36B-2-121. Rights of secured lenders.

§36B-2-101. Creation of condominium.

1 (a) A condominium may be created pursuant to this
2 chapter only by recording a declaration executed, in the
3 same manner as a deed, by all persons whose interests in
4 the real estate will be conveyed to unit owners and by
5 every lessor of a lease the expiration or termination of which
6 will terminate the condominium or reduce its size. The
7 declaration shall be recorded in every county in which any
8 portion of the condominium is located, and shall be indexed
9 in the name of the condominium and each declarant.

10 (b) A declaration or an amendment to a declaration
11 adding units to a condominium, may not be recorded unless
12 all structural components and mechanical systems of all
13 buildings containing or comprising any units thereby created
14 are substantially completed in accordance with the plans, as
15 evidenced by a recorded certificate of completion executed
16 by an independent engineer, surveyor, or architect.

17 (c) No interest in a unit may be conveyed until the unit
18 is substantially completed, as evidenced by a recorded certifi-
19 cate of completion executed by an independent architect, sur-
20 veyor, or engineer.

§36B-2-102. Unit boundaries.

1 Except as provided by the declaration:

2 (1) If walls, floors, or ceilings are designated as boundaries
3 of a unit, all lath, furring, wallboard, plasterboard, plaster,
4 paneling, tiles, wallpaper, paint, finished flooring, and any
5 other materials constituting any part of the finished surfaces

6 thereof are a part of the unit, and all other portions of the
7 walls, floors, or ceilings are a part of the common elements.

8 (2) If any chute, flue, duct, wire, conduit, bearing
9 wall, bearing column, or any other fixture lies partially
10 within and partially outside the designated boundaries of a
11 unit, any portion thereof serving only that unit is a
12 limited common element allocated solely to that unit, and
13 any portion thereof serving more than one unit or any
14 portion of the common elements is a part of the common
15 elements.

16 (3) Subject to the provisions of paragraph (2), all spaces,
17 interior partitions, and other fixtures and improvements
18 within the boundaries of a unit are a part of the unit.

19 (4) Any shutters, awnings, window boxes, doorsteps, stoops,
20 porches, balconies, patios, and all exterior doors and windows
21 or other fixtures designed to serve a single unit, but located
22 outside the unit's boundaries, are limited common elements
23 allocated exclusively to that unit.

§36B-2-103. Construction and validity of declaration and bylaws.

1 (a) All provisions of the declaration and bylaws are sever-
2 able.

3 (b) The rule against perpetuities may not be applied
4 to defeat any provision of the declaration or this chapter, or
5 any instrument executed pursuant to the declaration or this
6 chapter.

7 (c) In the event of a conflict between the provisions of
8 the declaration and the bylaws, the declaration prevails ex-
9 cept to the extent the declaration is inconsistent with this
10 chapter.

11 (d) Title to a unit and its common element interest is
12 not rendered unmarketable or otherwise affected by any
13 provision of unrecorded bylaws, or by reason of an in-
14 substantial failure of the declaration to comply with this chap-
15 ter.

§36B-2-104. Description of units.

1 After the declaration is recorded, a description of a unit

2 which sets forth the name of the condominium, the record-
3 ing data for the declaration, the county in which the condo-
4 minium is located, and the identifying number of the unit,
5 is a sufficient legal description of that unit and its common
6 element interest even if the common element interest is not
7 described or referred to therein.

§36B-2-105. Contents of declaration; all condominiums.

1 The declaration for a condominium must contain:

2 (1) the name of the condominium, which must include the
3 word "condominium" or be followed by the words "a con-
4 dominium";

5 (2) the name of every county in which any part of the
6 condominium is situated;

7 (3) a legally sufficient description of the real estate in-
8 cluded in the condominium;

9 (4) a description or delineation of the boundaries of each
10 unit, including the unit's identifying number;

11 (5) a statement of the maximum number of units that may
12 be created by the subdivision or conversion of units owned
13 by the declarant pursuant to section 2-115(c);

14 (6) a description of any limited common elements, as
15 provided in section 2-109;

16 (7) a description of any common elements not within the
17 boundaries of any convertible real estate which may be
18 allocated subsequently as limited common elements, together
19 with a statement that they may be so allocated and a
20 description of the method by which the allocations are to be
21 made;

22 (8) an allocation to each unit of an undivided interest
23 in the common elements, a portion of the votes in the
24 association, and a percentage or fraction of the common
25 expenses of the association (section 2-108);

26 (9) any restrictions on use, occupancy, and alienation of
27 the units;

28 (10) the recording data for recorded easements and
29 licenses appurtenant to or included in the condominium or to
30 which any portion of the condominium is or may become
31 subject; and

32 (11) any other matters the declarant deems appropriate.

§36B-2-106. Same—Flexible condominiums.

1 The declaration for a flexible condominium shall include,
2 in addition to the matters specified in section 2-105:

3 (1) an explicit reservation of any options to create units,
4 limited common elements, or both, within convertible real
5 estate, or to add additional real estate to or withdraw with-
6 drawable real estate from the condominium;

7 (2) a statement of the time limit, not exceeding seven
8 years after the recording of the declaration, upon which any
9 option reserved under paragraph (1) will lapse, together with
10 a statement of any circumstances that will terminate the
11 option before the expiration of the time limit;

12 (3) a statement of any limitations on any option reserved
13 under paragraph (1), other than limitations created by or
14 imposed pursuant to law, or else a statement that there are
15 no such limitations;

16 (4) a statement of the extent to which the common ele-
17 ment interest, relative voting strength in the association, and
18 share of common expense liability of each unit in the
19 condominium at the time the declaration is recorded may
20 be increased or decreased by actions pursuant to any option
21 reserved under paragraph (1), including the formulas to be
22 used for those reallocations;

23 (5) legally sufficient descriptions of each portion of con-
24 vertible, additional, and withdrawable real estate;

25 (6) if portions of any convertible, additional, or
26 withdrawable real estate may be converted, added, or
27 withdrawn at different times, a statement to that effect
28 together with (i) either a statement fixing the boundaries
29 of those portions and regulating the order in which they may
30 be converted, added, or withdrawn or a statement that

31 no assurances are made in those regards, and (ii) a statement
32 as to whether, if any portion of convertible, additional, or
33 withdrawable real estate is converted, added, or withdrawn,
34 all or any particular portion of that or any other real estate
35 must be converted, added, or withdrawn;

36 (7) a statement of (i) the maximum number of units that
37 may be created within any additional or convertible real
38 estate, or within any portion of either, the boundaries of
39 which are fixed pursuant to paragraph (6), (ii) how many of
40 those units will be restricted exclusively to residential use,
41 and (iii) the maximum number of units per acre that may be
42 created within any portions the boundaries of which are not
43 fixed pursuant to paragraph (6);

44 (8) if any of the units that may be built within any
45 additional or convertible real estate are not to be restricted
46 exclusively to residential use, a statement, with respect to
47 each portion of the additional and convertible real estate,
48 of the maximum percentage of the real estate areas, and the
49 maximum percentage of the floor areas of all units that may
50 be created therein, that are not restricted exclusively to
51 residential use;

52 (9) a statement of the extent to which any buildings
53 and units that may be erected upon each portion of the
54 additional or convertible real estate will be compatible
55 with the other buildings and units in the condominium in
56 terms of architectural style, quality of construction, prin-
57 cipal materials employed in construction, and size, or a
58 statement that no assurances are made in those regards;

59 (10) a statement that all restrictions in the declaration
60 affecting use, occupancy, and alienation of units will apply
61 to units created within any convertible or additional real
62 estate, or a statement of any differentiations that may be made
63 as to those units;

64 (11) general descriptions of all other improvements and
65 limited common elements that may be made or created upon or
66 within each portion of the additional or convertible real estate,
67 or a statement that no assurances are made in that regard;

68 (12) a statement of any limitations as to the locations
69 of any buildings or other improvements that may be made
70 within convertible or additional real estate, or a statement
71 that no assurances are made in that regard;

72 (13) a statement that any limited common elements
73 created within any convertible or additional real estate will
74 be of the same general types and sizes as those within other
75 parts of the condominium, or a statement of any other
76 assurances in that regard, or a statement that no assurances
77 are made in that regard;

78 (14) a statement that the proportion of limited common
79 elements to units created within convertible or additional
80 real estate will be approximately equal to the proportion
81 existing within other parts of the condominium, or a
82 statement of any other assurances in that regard, or a
83 statement that no assurances are made in that regard; and

84 (15) a statement of the extent to which any assurances
85 made in the declaration regarding additional or withdrawable
86 real estate pursuant to paragraphs (6) through (14) apply in
87 the event any additional real estate is not added to or any
88 withdrawable land is withdrawn from the condominium, or a
89 statement that those assurances do not apply if the real estate
90 is not added to or is withdrawn from the condominium.

§36B-2-107. Same—Leasehold condominiums.

1 (a) Any lease the expiration or termination of which may
2 terminate the condominium or reduce its size, or a memo-
3 randum thereof, shall be recorded, and the declaration shall
4 state:

5 (1) the recording data for the lease or a statement of
6 where the complete lease may be inspected;

7 (2) the date on which the lease is scheduled to expire;

8 (3) a legally sufficient description of the real estate sub-
9 ject to the lease;

10 (4) any right of the unit owners to redeem the reversion

11 and the manner whereby those rights may be exercised, or a
12 statement that they do not have those rights;

13 (5) any right of the unit owners to remove any improve-
14 ments within a reasonable time after the expiration or termi-
15 nation of the lease, or a statement that they do not have
16 those rights; and

17 (6) any rights of the unit owners to renew the lease and
18 the conditions of any renewal, or a statement that they do
19 not have those rights.

20 (b) After the declaration for a leasehold condominium is
21 recorded, neither the lessor nor his successor in interest
22 may terminate the leasehold interest of a unit owner who
23 makes timely payment of his share of the rent and otherwise
24 complies with all covenants which, if violated, would en-
25 title the lessor to terminate the lease. A unit owner's lease-
26 hold interest is not affected by failure of any other person
27 to pay rent or fulfill any other covenant.

28 (c) Acquisition of the leasehold interest of any unit owner
29 by the owner of the reversion or remainder does not merge
30 the leasehold and fee simple interests unless the leasehold
31 interests of all unit owners subject to that reversion or
32 remainder are acquired.

33 (d) If the expiration or termination of a lease decreases
34 the number of units in a condominium, the common element
35 interests, votes in the association, and common expense
36 liabilities shall be reallocated in accordance with section
37 1-107(a) as though those units had been taken by eminent
38 domain. Reallocations shall be confirmed by an amendment
39 to the declaration prepared, executed, and recorded by the
40 association.

**§36B-2-108. Allocation of common element interests, rates and
common expense liabilities.**

1 (a) The declaration shall allocate a fraction or per-
2 centage of undivided interests in the common elements and
3 in the common expenses of the association, and a portion of
4 the votes in the association, to each unit and state the
5 formulas used to establish those allocations.

6 (b) In a flexible condominium, the common element
7 interest and common expense liability allocated to each unit
8 must be equal, or proportionate to the relative size of each
9 unit, unless the declaration as originally recorded:

10 (1) requires that any units created in additional or
11 convertible real estate be substantially identical to the other
12 units in the condominium and provides that common element
13 interests and common expense liabilities will be allocated
14 to those units in accordance with the formulas used for the
15 initial allocations; or

16 (2) identifies all other types of units that may be created
17 in additional or convertible real estate in terms of archi-
18 tectural style, quality of construction, principal materials
19 to be used, and ranges of sizes, and states the formulas
20 upon which any reallocations of common element interests
21 and common expense liabilities will be made, or states the
22 common element interest and common expense liability to be
23 allocated to each unit that may be created.

24 (c) The number of votes allocated to each unit must be
25 equal, proportionate to that unit's common expense
26 liability, or proportionate to that unit's common element
27 interest. If the declaration allocates an equal number of
28 votes in the association to each unit, each unit that may be
29 subdivided or converted by the declarant into two or more
30 units, common elements, or both (section 2-115), must be
31 allocated a number of votes in the association proportionate
32 to the relative size of that unit compared to the aggregate
33 size of all units, and the remaining votes in the association
34 must be allocated equally to the other units. The declaration
35 may provide that different allocations of votes shall be made
36 to the units on particular matters specified in the declara-
37 tion.

38 (d) Except in the case of eminent domain (section 1-107),
39 expansion or conversion of a flexible condominium (section
40 2-111), withdrawal of withdrawable real estate (section 2-112),
41 relocation of boundaries between adjoining units (section
42 2-114), or subdivision of units (section 2-115), the common
43 element interest, votes, and common expense liability allo-

44 cated to any unit may not be altered without unanimous
45 consent of all unit owners. The common elements are not
46 subject to partition, and any purported conveyance, encum-
47 brance, judicial sale, or other voluntary or involuntary transfer
48 of an undivided interest in the common elements made
49 without the unit to which it is allocated is void.

50 (e) Except for minor variations due to rounding, the
51 sums of the undivided interests in the common elements and
52 common expense liabilities allocated at any time to all the
53 units shall each equal one if stated as fractions or one
54 hundred percent if stated as percentages. In the event of
55 discrepancy between the common element interest, votes, or
56 common expense liability allocated to a unit and the result
57 derived from application of the formulas, the allocated common
58 element interest, vote, or common expense liability prevails.

§36B-2-109. Limited common elements.

1 (a) Except for the limited common elements described in
2 section 2-102(2) and (4), the declaration shall specify to
3 which unit or units each limited common element is allocated.
4 That allocation may not be altered without the consent of
5 the unit owners whose units are affected.

6 (b) Subject to any provisions of the declaration, a limited
7 common element may be reallocated by a recorded assign-
8 ment executed by the unit owners between or among whose
9 units the reallocation is made, or by an amendment to the
10 declaration executed by those unit owners. The persons exe-
11 cuting the assignment or amendment to the declaration shall
12 provide a copy thereof to the association.

13 (c) A common element not previously allocated as a limit-
14 ed common element may not be so allocated except pursuant
15 to provisions in the declaration made in accordance with sec-
16 tion 2-105(7). The declaration may provide that the allocation
17 shall be made by deeds or assignments executed by the de-
18 clarant or the association, or by amendments to the declaration.

§36B-2-110. Plats and plans.

1 (a) Plats and plans are a part of the declaration. Separate
2 plats and plans are not required by this chapter if all the

3 information required by this section is contained in either
4 a plat or plan. Each plat and plan must be clear and legible
5 and contain a certification that the plat or plan accurately
6 depicts all existing conditions and contains all information
7 required by this section.

8 (b) Each plat must show:

9 (1) the name, location, and dimensions of the condo-
10 minium;

11 (2) the location and dimensions of all existing improve-
12 ments;

13 (3) the intended location and dimensions of any con-
14 templated improvement to be constructed anywhere within
15 the condominium labeled either "MUST BE BUILT" or
16 "NEED NOT BE BUILT," but need not show contemplated
17 improvements within the boundaries of convertible real estate;

18 (4) the location and dimensions of any convertible real
19 estate, labeled as such;

20 (5) the location and dimensions of any withdrawable real
21 estate, labeled as such;

22 (6) the extent of any encroachments by or upon any por-
23 tion of the condominium;

24 (7) to the extent feasible, the location and dimensions
25 of all easements serving or burdening any portion of the
26 condominium;

27 (8) the location and dimensions of any vertical unit
28 boundaries not shown or projected on plans recorded pursuant
29 to subsection (c) and that unit's identifying number;

30 (9) the location with reference to established datum of
31 any horizontal unit boundaries not shown or projected on
32 plans recorded pursuant to subsection (c) and that unit's
33 identifying number;

34 (10) the locations and dimensions of any real estate in
35 which the unit owners will own only an estate for years,
36 labeled as "leasehold real estate";

37 (11) the distance between noncontiguous parcels of real
38 estate comprising the condominium;

39 (12) the location and dimensions of limited common ele-
40 ments, including porches, balconies and patios, other than
41 parking spaces and other limited common elements described
42 in sections 2-102(2) and (4);

43 (13) all other matters customarily shown on land sur-
44 veys.

45 (c) Plans of every building that contains or comprises
46 all or part of any unit and is located or must be built
47 within any portion of the condominium, other than within the
48 boundaries of any convertible real estate, must show:

49 (1) the location and dimensions of the vertical boun-
50 daries of each unit, to the extent those boundaries lie
51 within or coincide with the boundaries of the building in
52 which the unit is located, and that unit's identifying number;

53 (2) any horizontal unit boundaries, with reference to
54 established datum, not shown on plats recorded pursuant to
55 subsection (b), and that unit's identifying number; and

56 (3) any units that may be converted by the declarant to
57 create additional units or common elements (section 2-
58 115(c)), identified appropriately.

59 (d) Unless the declaration provides otherwise, the hori-
60 zontal boundaries of part of a unit located outside of a
61 building have the same elevation as the horizontal boundaries
62 of the inside part, and need not be depicted on the plats
63 and plans.

64 (e) Upon converting convertible real estate or adding ad-
65 ditional real estate (section 2-115), the declarant shall record
66 new plats for that real estate conforming to the require-
67 ments of subsection (b) and new plans for any buildings
68 on that real estate conforming to the requirements of sub-
69 section (c). If less than all of any convertible real estate
70 is being converted, the new plats must also show the location
71 and dimensions of the remaining portion.

72 (f) If a declarant converts any unit into two or more

73 units, limited common elements, or both (section 2-115), he
74 shall record new plans showing the location and dimensions
75 of any new units and limited common elements thus created as
76 well as the location and dimensions of any portion of that
77 space not being converted.

78 (g) Instead of recording new plats and plans as required
79 by subsections (e) and (f), the declarant may record new
80 certifications of plats and plans previously recorded if those
81 plats and plans show all improvements required by subsections
82 (e) and (f).

83 (h) Any certification of a plat or plan required by this
84 section or section 2-101(b) must be made by an independent
85 surveyor, architect, or engineer.

§36B-2-111. Conversion and expansion of flexible condominiums.

1 (a) To convert convertible real estate or add additional
2 real estate pursuant to an option reserved under section
3 2-106(1) the declarant shall prepare, execute, and record
4 an amendment to the declaration (section 2-119) and comply
5 with section 2-110. The declarant is the unit owner of any
6 units thereby created. The amendment to the declaration
7 must assign an identifying number to each unit formed in the
8 convertible or additional real estate, and reallocate common
9 element interests, votes in the association, and common
10 expense liabilities. The amendment must describe or delineate
11 any limited common elements formed out of the convertible
12 or additional real estate, showing or designating the unit to
13 which each is allocated to the extent required by section
14 2-109.

15 (b) Convertible or withdrawable real estate may be
16 created within any additional real estate added to the con-
17 dominium if the amendment adding that real estate includes
18 all matters required by section 2-105 or section 2-106, as the
19 case may be, and the plat includes all matters required by sec-
20 tion 2-110(b). This provision does not extend the time limit on
21 conversion or contraction of a flexible condominium im-
22 posed by the declaration pursuant to section 2-106(2).

23 (c) Until conversion occurs or the period during which

24 conversion may occur expires, whichever occurs first, the
25 declarant alone is liable for real estate taxes assessed against
26 convertible real estate and all other expenses in connection
27 with that real estate. No other unit owner and no other
28 portion of the condominium is subject to a claim for pay-
29 ment of those taxes or expenses. Unless the declaration pro-
30 vides otherwise, any income or proceeds from convertible
31 real estate inures to the declarant.

§36B-2-112. Withdrawal of withdrawable real estate.

1 (a) To withdraw withdrawable real estate from a flexible
2 condominium pursuant to an option reserved under section
3 2-106(1), the declarant shall prepare, execute, and record
4 an amendment to the declaration containing a legally suffi-
5 cient description of the real estate being withdrawn and
6 stating the fact of withdrawal. The amendment must reallo-
7 cate common element interests, votes in the association, and
8 common expense liabilities to the remaining units in the con-
9 dominium in proportion to the respective interests, votes,
10 and liabilities of those units before the withdrawal, and the
11 reallocation is effective when the amendment is recorded.

12 (b) If a portion of the withdrawable real estate was des-
13 cribed pursuant to section 2-106(6), that portion may not
14 be withdrawn if any person other than the declarant owns a
15 unit situated therein. If the portion was not so described,
16 none of it is withdrawable if any person other than the
17 declarant owns a unit situated therein.

18 (c) Until withdrawal occurs or the period during which
19 withdrawal may occur expires, whichever occurs first, the
20 declarant alone is liable for real estate taxes assessed against
21 withdrawable real estate and all other expenses in connection
22 with that real estate. No other unit owner and no other
23 portion of the condominium is subject to a claim for payment
24 of those taxes or expenses. Unless the declaration provides
25 otherwise, any income or proceeds from withdrawable real
26 estate inures to the declarant.

§36B-2-113. Alterations of units.

1 Subject to the provisions of the declaration and other
2 provisions of law, a unit owner:

3 (1) may make any improvements or alterations to his unit
4 that do not impair the structural integrity or mechanical
5 systems or lessen the support of any portion of the con-
6 dominium;

7 (2) may not change the appearance of the common ele-
8 ments, or the exterior appearance of a unit or any other
9 portion of the condominium, without permission of the
10 association;

11 (3) after acquiring an adjoining unit or an adjoining
12 part of an adjoining unit, may remove or alter any inter-
13 vening partition or create apertures therein, even if the
14 partition in whole or in part is a common element, if those
15 acts do not impair the structural integrity or mechanical
16 systems or lessen the support of any portion of the con-
17 dominium. Removal of partitions or creation of apertures
18 under this paragraph is not an alteration of boundaries.

§36B-2-114. Relocation of boundaries between adjoining units.

1 (a) Subject to the provisions of the declaration and
2 other provisions of law, the boundaries between adjoining
3 units may be relocated by an amendment to the declaration
4 upon application to the association by the owners of those
5 units. If the owners of the adjoining units have specified
6 a reallocation between their units of their common element
7 interests, votes in the association, and common expense
8 liabilities, the application must state the proposed re-
9 allocations. Unless the executive board determines, with-
10 in thirty days, that the reallocations are unreasonable,
11 the association shall prepare an amendment that identifies
12 the units involved, states the reallocations, is executed by
13 those unit owners, contains words of conveyance between
14 them, and, upon recordation, is indexed in the name of the
15 grantor and the grantee.

16 (b) The association shall prepare and record plats or
17 plans necessary to show the altered boundaries between ad-
18 joining units, and their dimensions and identifying numbers.

§36B-2-115. Subdivision or conversion of units.

1 (a) If the declaration expressly so permits, a unit may

2 be subdivided into two or more units or, in the case of a
3 unit owned by a declarant, may be subdivided or converted
4 into two or more units, common elements, or a combination
5 of units and common elements. Subject to the provisions of
6 the declaration and other provisions of law, upon application
7 of a unit owner to subdivide a unit, or upon application of
8 a declarant to convert a unit, the association shall pre-
9 pare, execute, and record an amendment to the declaration,
10 including the plats and plans, subdividing or converting
11 that unit.

12 (b) The amendment to the declaration must be executed
13 by the owner of the unit to be subdivided, assign an
14 identifying number to each unit created, and reallocate the
15 common element interest, votes in the association, and
16 common expense liability formerly allocated to the
17 subdivided unit to the new units in any reasonable manner
18 prescribed by the owner of the subdivided unit.

19 (c) In the case of a unit owned by a declarant, if a
20 declarant converts all of a unit to common elements, the
21 amendment to the declaration must reallocate among the other
22 units the common element interest, votes in the association,
23 and common expense liability formerly allocated to the con-
24 verted unit on the same basis used for the initial allocation
25 thereof.

§36B-2-116. Interpretation of deeds.

1 In interpreting deeds and plans, the existing physical
2 boundaries of a unit or of a unit reconstructed in substantial
3 accordance with the original plats and plans thereof become
4 its boundaries rather than the metes and bounds expressed in
5 the deed or plat or plan, regardless of settling or lateral move-
6 ment of the building, or minor variance between boundaries
7 shown on the plats or plans or in the deed and those of the
8 building.

§36B-2-117. Use for sales purposes.

1 A declarant may maintain sales offices, management of-
2 fices, and models in the condominium only if the
3 declaration so provides and specifies the rights of a de-

4 clarant with regard to the number, size, location, and
5 relocation thereof. Any sales office, management office, or
6 model not designated a unit by the declaration is a common
7 element, and if a declarant ceases to be a unit owner, he
8 ceases to have any rights with regard thereto unless it is
9 removed promptly from the condominium in accordance with a
10 right to remove reserved in the declaration. Subject to any
11 limitations in the declaration, a declarant may maintain signs
12 on the common elements advertising the condominium.

§36B-2-118. Easement to facilitate completion, conversion and expansion.

1 Subject to the provisions of the declaration, a declarant
2 has an easement through the common elements as may be
3 reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether
4 arising under this chapter or reserved in the declaration.
5

§36B-2-119. Amendment of declaration.

1 (a) Except in cases of amendments that may be executed
2 by a declarant under sections 2-110(e) and (f), 2-111(a), or
3 2-112(a); the association under sections 1-107, 2-107(d),
4 2-109(c), or 2-115(a); or certain unit owners under sections
5 2-109(b), 2-114(a), 2-115(b), or 2-120(b), and except as
6 limited by subsection (d), the declaration, including the
7 plats and plans, may be amended only by vote or agreement
8 of unit owners of units to which at least sixty-seven percent
9 of the votes in the association are allocated, or any larger
10 majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted
11 exclusively to nonresidential use.
12

13 (b) No action to challenge the validity of an amendment
14 adopted by the association pursuant to this section may be
15 brought more than one year after the amendment is recorded.

16 (c) Every amendment to the declaration must be recorded
17 in every county in which any portion of the condominium is
18 located, and is effective only upon recordation.
19

20 (d) Except to the extent expressly permitted or required

21 by other provisions of this chapter, no amendment may create
22 or increase special declarant rights, increase the number of
23 units, or change the boundaries of any unit, the common
24 element interest, common expense liability, or voting strength
25 in the association allocated to a unit, or the uses to which
26 any unit is restricted, in the absence of unanimous consent
27 of the unit owners.

28 (e) Amendments to the declaration required by this chap-
29 ter to be recorded by the association shall be prepared, exe-
30 cuted, recorded, and certified by any officer of the associa-
31 tion designated for that purpose or, in the absence of desig-
32 nation, by the president of the association.

§36B-2-120. Termination of condominium.

1 (a) Except in the case of a taking of all the units by
2 eminent domain (section 1-107), a condominium may be
3 terminated only by agreement of unit owners of units to
4 which at least eighty percent of the votes in the association
5 are allocated, or any larger percentage the declaration speci-
6 fies. The declaration may specify a smaller percentage only
7 if all of the units in the condominium are restricted exclusively
8 to nonresidential uses.

9 (b) An agreement of unit owners to terminate a con-
10 dominium must be evidenced by their execution of a termina-
11 tion agreement or ratifications thereof. If, pursuant to a
12 termination agreement, the real estate constituting the con-
13 dominium is to be sold following termination, the termination
14 agreement must set forth the terms of the sale. A termination
15 agreement and all ratifications thereof must be recorded in
16 every county in which a portion of the condominium is
17 situated, and is effective only upon recordation.

18 (c) The association, on behalf of the unit owners, may
19 contract for the sale of the condominium, but the contract
20 is not binding on the unit owners until approved pursuant to
21 subsections (a) and (b). If the real estate constituting
22 the condominium is to be sold following termination, title
23 to that real estate, upon termination, vests in the
24 association as trustee for the holder of all interest in
25 the units. Thereafter, the association has all powers

26 necessary and appropriate to effect the sale. Until the
27 sale has been concluded and the proceeds thereof dis-
28 tributed, the association continues in existence with all
29 powers it had before termination. Proceeds of the sale must
30 be distributed to unit owners and lienholders as their
31 interests may appear, in proportion to the respective interest
32 of unit owners as provided in subsection (f). Unless other-
33 wise specified in the termination agreement, as long as the
34 association holds title to the real estate, each unit owner and
35 his successors in interest have an exclusive right to occupancy
36 of the portion of the real estate that formerly constituted his
37 unit. During the period of that occupancy, each unit owner
38 and his successors in interest remain liable for all assessments
39 and other obligations imposed on unit owners by this chapter
40 or the declaration.

41 (d) If the real estate constituting the condominium is
42 not to be sold following termination, title to the real estate,
43 upon termination, vests in the unit owners as tenants in
44 common in proportion to their respective interests as pro-
45 vided in subsection (f), and liens on the units shift ac-
46 cordingly. While the tenancy in common exists, each unit
47 owner and his successors in interest have an exclusive right
48 to occupancy of the portion of the real estate that formerly
49 constituted his unit.

50 (e) Following termination of the condominium, and after
51 payment of or provision for the claims of the association's
52 creditors, the assets of the association shall be distributed
53 to unit owners in proportion to their respective interests
54 as provided in subsection (f). The proceeds of sale described
55 in subsection (c) and held by the association as trustees
56 are not assets of the association.

57 (f) The respective interests of unit owners referred to
58 in subsections (c), (d) and (e) are as follows:

59 (1) Except as provided in paragraph (2), the respective
60 interests of unit owners are the fair market values of their
61 units, limited common elements, and common element interests
62 immediately before the termination, as determined by one or
63 more independent appraisers selected by the association. The

64 decision of the independent appraisers shall be distributed
65 to the unit owners and becomes final unless disap-
66 proved within thirty days after distribution by unit owners
67 of units to which twenty-five percent of the votes in the
68 association are allocated. The proportion of any unit
69 owner's interest to that of all unit owners is determined by
70 dividing the fair market value of that unit owner's unit and
71 common element interest by the total fair market value of
72 all the units and common elements.

73 (2) If any unit or any limited common element is des-
74 troyed to the extent that an appraisal of the fair market
75 value thereof prior to destruction cannot be made, the in-
76 terests of all unit owners are their respective common element
77 interests immediately before the termination.

78 (g) Foreclosure or enforcement of a lien or encumbrance
79 against the entire condominium does not of itself terminate
80 the condominium, and foreclosure or enforcement of a lien, or
81 encumbrance against a portion of the condominium, other
82 than withdrawable real estate, does not withdraw that portion
83 from the condominium. Foreclosure or enforcement of a lien
84 or encumbrance against withdrawable real estate does not of
85 itself withdraw that real estate from the condominium, but
86 the person taking title thereto has the right to require from
87 the association, upon request, an amendment excluding the
88 real estate from the condominium.

§36B-2-121. Rights of secured lenders.

1 The declaration may require that all or a specified number
2 or percentage of the mortgages or beneficiaries of deeds
3 of trust encumbering the units approve specified actions of
4 the unit owners or the association as a condition to the
5 effectiveness of those actions, but no requirement for approval
6 may operate to (1) deny or delegate control over the general
7 administrative affairs of the association by the unit owners
8 or the executive board, or (2) prevent the association or the
9 executive board from commencing, intervening in, or settling
10 any litigation or proceeding, or receiving and distributing any
11 insurance proceeds pursuant to section 3-112.

ARTICLE 3. MANAGEMENT OF THE CONDOMINIUM.

- §36B-3-101. Organization of unit owners' association.
- §36B-2-102. Powers of unit owners' association.
- §36B-3-103. Executive board members and officers.
- §36B-3-104. Transfer of special declarant rights.
- §36B-3-105. Termination of contracts and leases of declarant.
- §36B-3-106. Bylaws.
- §36B-3-107. Upkeep of the condominium.
- §36B-3-108. Meetings.
- §36B-3-109. Quorums.
- §36B-3-110. Voting; proxies.
- §36B-3-111. Tort and contract liability.
- §36B-3-112. Insurance.
- §36B-3-113. Surplus funds.
- §36B-3-114. Assessments for common expenses.
- §36B-3-115. Lien for assessments.
- §36B-3-116. Association records.
- §36B-3-117. Association as trustee.

§36B-3-101. Organization of unit owners' association.

1 A unit owners' association shall be organized no later
2 than the date the condominium is created. The membership
3 of the association at all times shall consist exclusively of
4 all the unit owners or, following termination of the
5 condominium, of all former unit owners entitled to dis-
6 tributions of proceeds under section 2-120, or their
7 heirs, successors, or assigns. The association shall be organ-
8 ized as a profit or nonprofit corporation or as an unin-
9 corporated association.

§36B-3-102. Powers of unit owners' association.

1 (a) Subject to the provisions of the declaration, the asso-
2 ciation, even if unincorporated, may:

3 (1) adopt and amend bylaws and rules and regulations;

4 (2) adopt and amend budgets for revenues, expenditures,
5 and reserves and collect assessments for common expenses
6 from unit owners;

7 (3) hire and terminate managing agents and other em-
8 ployees, agents, and independent contractors;

9 (4) institute, defend, or intervene in litigation or ad-

- 10 ministrative proceeding in its own name on behalf of it-
11 self or two or more unit owners on matters effecting the
12 condominium;
- 13 (5) make contracts and incur liabilities;
- 14 (6) regulate the use, maintenance, repair, replacement,
15 and modification of common elements;
- 16 (7) cause additional improvements to be made as a part
17 of the common elements;
- 18 (8) acquire, hold, encumber, and convey in its own name
19 any right, title, or interest to real or personal property;
- 20 (9) grant easements, leases, licenses, and concessions
21 through or over the common elements;
- 22 (10) impose and receive any payments, fees or charges
23 for the use, rental, or operation of the common elements
24 other than limited common elements described in section
25 2-102(2) and (4);
- 26 (11) impose charges for late payment of assessments and,
27 after notice and an opportunity to be heard, levy reasonable
28 fines for violations of the declaration, bylaws, and rules
29 and regulations of the association;
- 30 (12) impose reasonable charges for the preparation and
31 recordation of amendments to the declaration, resale cer-
32 tificates required by section 4-107, or statements of unpaid
33 assessments;
- 34 (13) provide for the indemnification of its officers and
35 executive board and maintain directors' and officers' liability
36 insurance;
- 37 (14) exercise any other powers conferred by the declaration
38 or bylaws;
- 39 (15) exercise all other powers that may be exercised in
40 this state by legal entities of the same type as the association;
41 and
- 42 (16) exercise any other powers necessary and proper for
43 the governance and operation of the association.

44 (b) Notwithstanding subsection (a), the declaration may
45 not impose limitations on the power of the association to
46 deal with the declarant that are more restrictive than the
47 limitations imposed on the power of the association to deal
48 with other persons.

§36B-3-103. Executive board members and officers.

1 (a) Except as provided in the declaration, the bylaws,
2 in subsection (b), or other provisions of this chapter, the
3 executive board may act in all instances on behalf of the
4 association. The officers and members of the executive
5 board appointed by the declarant are subject to liability as
6 fiduciaries of the unit owners for their acts or omissions.

7 (b) The executive board may not act on behalf of the
8 association to amend the declaration (section 2-119), to
9 terminate the condominium (section 2-120), or to elect mem-
10 bers of the executive board or determine the qualifications,
11 powers and duties, or terms of office of executive board
12 members (section 3-103(e)), but the executive board may
13 fill vacancies in its membership for the unexpired portion of
14 any term. In addition to other rights conferred by the
15 declaration, bylaws or this act, the unit owners, by majority
16 or any larger vote specified in the declaration, may reject
17 any budget or capital expenditure approved by the executive
18 board, within thirty days after the approval.

19 (c) Subject to subsection (d), the declaration may provide
20 for a period of declarant control of the association, during
21 which period a declarant, or persons designated by him,
22 may appoint and remove the officers and members of the
23 executive board. Any period of declarant control extends
24 from the date of the first conveyance of a unit to a person
25 other than a declarant for a period not exceeding five years
26 in the case of a flexible condominium containing convertible
27 real estate or to which additional real estate may be added,
28 or three years in the case of any other condominium.
29 Regardless of the period provided in the declaration, a period
30 of declarant control terminates no later than sixty days after
31 conveyance of seventy-five percent of the units to unit owners
32 other than a declarant. A declarant may voluntarily sur-
33 render the right to appoint and remove officers and members

34 of the executive board before termination of that period, but
35 in that event he may require, for the duration of the period
36 of declarant control, that specified actions of the association
37 or executive board, as described in a recorded instrument
38 executed by the declarant, be approved by the declarant
39 before they become effective.

40 (d) Not later than sixty days after conveyance of twenty-
41 five percent of the units to unit owners other than a de-
42 clarant, not less than twenty-five percent of the members
43 of the executive board shall be elected by unit owners other
44 than the declarant. Not later than sixty days after con-
45 veyance of fifty percent of the units to unit owners other
46 than a declarant, not less than thirty-three and one-third
47 percent of the members of the executive board shall be
48 elected by unit owners other than the declarant.

49 (e) Not later than the termination of any period of
50 declarant control, the unit owners shall elect an executive
51 board of at least three members, at least a majority of whom
52 must be unit owners. The executive board shall elect the
53 officers. The persons elected shall take office upon election.

54 (f) In determining whether the period of declarant control
55 has terminated under subsection (c), or whether unit owners
56 other than a declarant are entitled to elect members of the
57 executive board under subsection (d), the percentage of the
58 units conveyed is presumed to be that percentage which would
59 have been conveyed if all the units the declarant has built
60 or reserved the right to build in the declaration were in-
61 cluded in the condominium.

§36B-3-104. Transfer of special declarant rights.

1 (a) No special declarant rights (section 1-103 (22)) created
2 or reserved under this chapter may be transferred except by
3 an instrument evidencing the transfer recorded in every
4 county in which any portion of the condominium is located.
5 The instrument is not effective unless executed by the trans-
6 feree.

7 (b) Upon transfer of any special declarant right, the lia-
8 bility of a transferor declarant is as follows:

9 (1) A transferor is not relieved of any obligation or liability
10 arising before the transfer and remains liable for warranty
11 obligations imposed upon him by this chapter. Lack of pri-
12 vity does not deprive any unit owner of standing to bring an
13 action to enforce any obligation of the transferor;

14 (2) If a transferor retains any special declarant right, or
15 if a successor to any special declarant right is an affiliate of
16 a declarant (section 1-103(2)), the transferor is subject to
17 liability for all obligations and liabilities imposed on a de-
18 clarant by this chapter or by the declaration arising after the
19 transfer and is jointly and severally liable with the successor
20 for the liabilities and obligations of the successor which re-
21 late to the condominium;

22 (3) A transferor who retains no special declarant right has
23 no liability for any act or omission or any breach of a contrac-
24 tual or warranty obligation arising from the exercise of a
25 special declarant right by a successor declarant who is not an
26 affiliate of the transferor.

27 (c) Unless otherwise provided in a mortgage instrument or
28 deed of trust, in case of foreclosure of a mortgage, sale by a
29 trustee under a deed of trust, or sale under bankruptcy act
30 or receivership proceedings, of any units owned by a declar-
31 ant in the condominium, a person acquiring title to all the
32 units being foreclosed or sold, but only upon his request,
33 succeeds to all special declarant rights, or only to any rights
34 reserved in the declaration pursuant to section 2-117 to
35 maintain models, sales offices and signs. The judgment or
36 instrument conveying title shall provide for transfer of only
37 the special declarant rights requested.

38 (d) Upon foreclosure, sale by a trustee under a deed of
39 trust, or sale under bankruptcy act or receivership proceed-
40 ings, of all units in a condominium owned by a declarant:

41 (1) the declarant ceases to have any special declarant rights,
42 and

43 (2) the period of declarant control (section 3-103(c)) termi-
44 nates unless the judgment or instrument conveying title pro-
45 vides for transfer of all special declarant rights to a successor
46 declarant.

47 (e) The liabilities and obligations of persons who succeed
48 to special declarant rights are as follows:

49 (1) a successor to any special declarant right who is an
50 affiliate of a declarant is subject to all obligations and lia-
51 bilities imposed on any declarant by this chapter or by the
52 declaration;

53 (2) a successor to any special declarant right, other than
54 a successor described in paragraphs (3) or (4), who is not an
55 affiliate of a declarant, is subject to all obligations and lia-
56 bilities imposed upon a declarant by this chapter or the
57 declaration, but he is not subject to liability for misrepresen-
58 tations or warranty obligations on improvements made by any
59 previous declarant or made before the condominium was
60 created, or for a breach of fiduciary obligation by any pre-
61 vious declarant;

62 (3) a successor to only a right reserved in the declaration
63 to maintain models, sales offices, and signs (section 2-117),
64 if he is not an affiliate of a declarant, may not exercise any
65 other special declarant right, and is not subject to any lia-
66 bility or obligation as a declarant, except the obligation to
67 provide a public offering statement, and any liability arising
68 as a result thereof;

69 (4) a successor to all special declarant rights who is not
70 an affiliate of a declarant and who succeeded to those rights
71 pursuant to a deed in lieu of foreclosure or a judgment or in-
72 strument conveying title to units under subsection (c), may
73 declare his intention in a recorded instrument to hold those
74 rights solely for transfer to another person. Thereafter, until
75 transferring all special declarant rights to any person ac-
76 quiring title to any unit owned by the successor, or until re-
77 cording an instrument permitting exercise of all those rights,
78 that successor may not exercise any of those rights other than
79 the right to control the executive board in accordance with
80 the provisions of section 3-103(c) for the duration of any
81 period of declarant control, and any attempted exercise of
82 those rights is void. So long as a successor declarant may not
83 exercise special declarant rights under this subsection, he is
84 not subject to any liability or obligation as a declarant other

85 than liability for the successor's acts and omissions under
86 section 3-103(c).

87 (f) Nothing in this section subjects any successor to a
88 special declarant right to any claims against or other obliga-
89 tions of a transferor declarant, other than claims and obli-
90 gations arising under this chapter or the declaration.

§36B-3-105. Termination of contracts and leases of declarant.

1 If entered into before the executive board elected by the
2 unit owners pursuant to section 3-103(e) takes office, (1)
3 any management contract, employment contract, or lease of
4 recreational or parking areas or facilities, (2) any other
5 contract or lease to which a declarant or an affiliate of a
6 declarant is a party, or (3) any contract or lease that is not
7 bona fide or was unconscionable to the unit owners at the
8 time entered into under the circumstances then prevailing,
9 may be terminated without penalty by the association at
10 any time after the executive board elected by the unit owners
11 pursuant to section 3-103(e) takes office upon not less than
12 ninety days' notice to the other party. This subsection does
13 not apply to any lease the termination of which would
14 terminate the condominium or reduce its size, unless the real
15 estate subject to that lease was submitted to the condominium
16 for the purpose of avoiding the right of the association to
17 terminate a lease under this section.

§36B-3-106. Bylaws.

- 1 (a) The bylaws of the association must provide for:
- 2 (1) the number of members of the executive board and the
3 titles of the officers of the association;
- 4 (2) election by the executive board of a president, trea-
5 surer, secretary, and any other officers of the association the
6 bylaws specify;
- 7 (3) the qualifications, powers and duties, terms of office,
8 and manner of electing and removing executive board members
9 and officers and filling vacancies;
- 10 (4) which, if any, of its powers the executive board or

11 officers may delegate to other persons or to a managing agent;
12 and

13 (5) which of its officers may prepare, execute, certify,
14 and record amendments to the declaration on behalf of the
15 association.

16 (b) Subject to the provisions of the declaration, the
17 bylaws may provide for any other matters the association
18 deems necessary and appropriate.

§36B-3-107. Upkeep of the condominium.

1 (a) Except to the extent provided by the declaration or
2 section 3-112(d), the association is responsible for main-
3 tenance, repair, and replacement of the common elements,
4 and each unit owner is responsible for maintenance, repair,
5 and replacement of his unit. Each unit owner shall afford
6 to the association and the other unit owners, and to their
7 agents or employees, access through his unit reasonably
8 necessary for those purposes. If damage is inflicted on the
9 common elements or any unit through which access is taken,
10 the unit owner responsible for the damage, or the association
11 if it is responsible, is liable for the prompt repair thereof.

12 (b) If any unit in a condominium all of whose units are
13 restricted to nonresidential use is damaged, and the ex-
14 terior appearance of the unit is thereby affected, the person
15 responsible for the exterior of the unit shall cause the unit
16 to be repaired or rebuilt to the extent necessary to restore
17 its exterior appearance. If that person fails within a reasonable
18 period of time to effect the repairs or rebuilding, the
19 association may purchase the unit at its fair market value to
20 be determined by an independent appraiser selected by the
21 association.

§36B-3-108. Meetings.

1 The bylaws must require that meetings of the association
2 be held at least once each year and provide for special
3 meetings. The bylaws must specify which of the association's
4 officers, not less than ten nor more than sixty days in
5 advance of any meeting, shall cause notice to be hand-
6 delivered or sent prepaid by United States mail to the mailing

7 address of each unit or to any other mailing address desig-
8 nated in writing by the unit owner. The notice of any meeting
9 must state the time and place of the meeting and the items
10 on the agenda, including the general nature of any proposed
11 amendment to the declaration or bylaws.

§36B-3-109. Quorums.

1 (a) Unless the bylaws provide otherwise, a quorum is
2 deemed present throughout any meeting of the association if
3 persons entitled to cast twenty percent of the votes which
4 may be cast for election of the executive board are present
5 in person or by proxy at the beginning of the meeting. The
6 bylaws may require a larger percentage or a smaller percentage
7 not less than ten percent.

8 (b) Unless the bylaws specify a larger percentage, a
9 quorum is deemed present throughout any meeting of the
10 executive board if persons entitled to cast fifty percent of
11 the votes on that board are present at the beginning of the
12 meeting.

§36B-3-110. Voting; proxies.

1 (a) If only one of the multiple owners of a unit is present
2 at a meeting of the association, he is entitled to cast all the
3 votes allocated to that unit. If more than one of the multiple
4 owners are present, the votes allocated to that unit may be
5 cast only in accordance with their unanimous agreement unless
6 the declaration expressly provides otherwise. There is unani-
7 mous agreement if any one of the multiple owners casts the
8 votes allocated to that unit without protest being made prompt-
9 ly to the person presiding over the meeting by any of the
10 other owners of the unit.

11 (b) Votes allocated to a unit may be cast pursuant to a
12 proxy duly executed by a unit owner. If a unit is owned by
13 more than one person, each owner of the unit may vote or
14 register protest to the casting of votes by the other owners
15 of the unit through a duly executed proxy. A unit owner may
16 not revoke a proxy given pursuant to this section except by
17 actual notice of revocation to the person presiding over a
18 meeting of the association. A proxy is void if it is not dated

19 or purports to be revocable without notice. A proxy terminates
20 one year after its date, unless it specifies a shorter term.

21 (c) The declaration may provide for cumulative voting
22 only for the purpose of electing members of the executive
23 board and for class voting on specified issues affecting the
24 class if necessary to protect valid interests of the class. A
25 declarant may not utilize cumulative or class voting for the
26 purpose of evading any limitation imposed on declarants by
27 this chapter.

28 (d) No votes allocated to a unit owned by the association
29 may be cast.

§36B-3-111. Tort and contract liability.

1 (a) An action in tort alleging a wrong done by a declarant
2 or his agent or employee in connection with a portion of any
3 convertible or withdrawable real estate or other portion of the
4 condominium which the declarant has the responsibility to
5 maintain may not be brought against the association or a unit
6 owner other than a declarant. Otherwise, an action in tort
7 alleging a wrong done by the association or by an agent or
8 employee of the association, or an action arising from a con-
9 tract made by or on behalf of the association, shall be
10 brought against the association. If the tort or breach of con-
11 tract occurred during any period of declarant control (section
12 3-103(c)), the declarant is liable to the association for all
13 unreimbursed losses suffered by the association as a result
14 of that tort or breach of contract, including costs and reason-
15 able attorney's fees. Any statute of limitation affecting the
16 association's right of action under this section is tolled until
17 the period of declarant control terminates. A unit owner is
18 not precluded from bringing an action contemplated by this
19 subsection because he is a unit owner or a member or officer
20 of the association.

21 (b) A judgment for money against the association if prop-
22 erly docketed as required by section five, article three, chapter
23 thirty-eight of this code is a lien against all of the units. No
24 other property of a unit owner is subject to the claims of
25 creditors of the association. The association shall notify all
26 unit owners in any manner reasonably calculated to give

27 notice to unit owners of the filing of any action against the
28 association, including notice by certified or registered mail,
29 return receipt requested.

30 (c) No judgment shall be a lien as against a subsequent
31 purchaser of any unit for valuable consideration without notice
32 unless it is docketed as required by section five, article three,
33 chapter thirty-eight of this code. A judgment against the asso-
34 ciation shall be indexed in the name of the condominium and
35 of the particular unit owners.

§36B-3-112. Insurance.

1 (a) Commencing not later than the time of the first
2 conveyance of a unit to a person other than a declarant, the
3 association shall maintain, to the extent reasonably available:

4 (1) property insurance on the common elements and units,
5 exclusive of improvements and betterments installed in units
6 by unit owners, insuring against all risks of direct physical
7 loss commonly insured against or, in the case of a conversion
8 condominium, against fire and extended coverage perils. The
9 total amount of insurance after application of any deductibles
10 shall be not less than eighty percent of the actual cash value
11 of the insured property, exclusive of land, excavations, founda-
12 tions, and other items normally excluded from property
13 policies; and

14 (2) comprehensive general liability insurance, including
15 medical payments insurance, in an amount determined by the
16 executive board but not less than any amount specified in
17 the declaration, covering all occurrences commonly insured
18 against for death, bodily injury, and property damage arising
19 out of or in connection with the use, ownership, or main-
20 tenance of the common elements.

21 (b) If the insurance described in subsection (a) is not
22 maintained, the association promptly shall cause notice of
23 that fact to be hand-delivered or sent prepaid by United
24 States mail to all unit owners. The declaration may require
25 the association to carry any other insurance, and the associa-
26 tion in any event may carry any other insurance it deems
27 appropriate to protect the association or the unit owners.

28 (c) Insurance policies carried pursuant to subsection (a)
29 must provide that:

30 (1) each unit owner is an insured person under the
31 policy with respect to liability arising out of his ownership
32 of an undivided interest in the common elements or member-
33 ship in the association;

34 (2) the insurer waives its right to subrogation under the
35 policy against any unit owner of the condominium or members
36 of his household;

37 (3) no act or omission by any unit owner, unless acting
38 within the scope of his authority on behalf of the association,
39 will void the policy or be a condition to recovery under the
40 policy; and

41 (4) if, at the time of a loss under the policy, there is
42 other insurance in the name of a unit owner covering the
43 same property covered by the policy, the policy is primary
44 insurance not contributing with the other insurance.

45 (d) Any loss covered by the property policy under sub-
46 section (a)(1) shall be adjusted with the association, but
47 the insurance proceeds for that loss shall be payable to any
48 insurance trustee designated for that purpose, or otherwise
49 to the association, and not to any mortgagee or beneficiary
50 under a deed of trust. The insurance trustee or the association
51 shall hold any insurance proceeds in trust for unit owners
52 and lienholders as their interests may appear. Subject
53 to the provisions of subsection (g), the proceeds shall be
54 disbursed first for the repair or restoration of the damaged
55 common elements and units, and unit owners and lienholders
56 are not entitled to receive payment of any portion of the
57 proceeds unless there is a surplus of proceeds after the com-
58 mon elements and units have been completely repaired or
59 restored, or the condominium is terminated.

60 (e) An insurance policy issued to the association does
61 not prevent a unit owner from obtaining insurance for his
62 own benefit.

63 (f) An insurer that has issued an insurance policy under
64 this section shall issue certificates or memoranda of insurance

65 to the association and, upon request, to any unit owner,
66 mortgagee, or beneficiary under a deed of trust. The in-
67 surance may not be canceled until thirty days after notice of
68 the proposed cancellation has been mailed to the association,
69 each unit owner and each mortgagee or beneficiary under
70 a deed of trust to whom certificates of insurance have been
71 issued.

72 (g) Any portion of the condominium damaged or destroyed
73 shall be repaired or replaced promptly by the association
74 unless (1) the condominium is terminated, (2) repair or
75 replacement would be illegal under any state or local health
76 or safety statute or ordinance, or (3) eighty percent of the
77 unit owners, including every owner of a unit or assigned
78 limited common element which will not be rebuilt, vote not
79 to rebuild. The cost of repair or replacement in excess of
80 insurance proceeds and reserves is a common expense. If the
81 entire condominium is not repaired or replaced, (1) the
82 insurance proceeds attributable to the damaged common ele-
83 ments shall be used to restore the damaged area to a condi-
84 tion compatible with the remainder of the condominium, (2)
85 the insurance proceeds attributable to units and limited com-
86 mon elements which are not rebuilt shall be distributed to
87 the owners of those units and the owners of the units to
88 which those limited common elements were assigned, and (3)
89 the remainder of the proceeds shall be distributed to all the
90 unit owners in proportion to their common element interest.
91 If the unit owners vote not to rebuild any unit, that unit's
92 entire common element interest, votes in the association,
93 and common expense liability are automatically reallocated
94 upon the vote as if the unit had been condemned under
95 section 1-107(a), and the association promptly shall pre-
96 pare, execute, and record an amendment to the declaration
97 reflecting the reallocations. Notwithstanding the provisions
98 of this subsection, section 2-120 governs the distribution of
99 insurance proceeds if the condominium is terminated.

100 (h) The provisions of this section may be varied or
101 waived in the case of a condominium all of whose units are
102 restricted to nonresidential use.

§36B-3-113. Surplus funds.

1 Unless otherwise provided in the declaration, any surplus
2 funds of the association remaining after payment of or
3 provision for common expenses and any prepayment of
4 reserves must be credited to the unit owners to reduce their
5 future common expense assessments.

§36B-3-114. Assessments for common expenses.

1 (a) Until the association makes a common expense
2 assessment, the declarant shall pay all the expenses of the
3 condominium. After any assessment has been made by the
4 association, assessments shall be made at least annually and
5 shall be based on a budget adopted at least annually by the
6 association.

7 (b) Except for assessments under subsection (c), common
8 expenses shall be assessed against all the units in accordance
9 with the common expense liability allocated to each unit
10 (section 2-108). Any past due assessment or installment
11 thereof shall bear interest at the rate established by the
12 association not exceeding eighteen percent per year.

13 (c) Except as provided by the declaration:

14 (1) any common expense associated with the maintenance,
15 repair, or replacement of a limited common element shall be
16 assessed in equal shares against the units to which that
17 limited common element was assigned at the time the expense
18 was incurred; and

19 (2) any common expense benefiting fewer than all of the
20 units shall be assessed exclusively against the units benefited.

21 (d) If common expense liabilities are reallocated, com-
22 mon expense assessments and any installment thereof not
23 yet due shall be recalculated in accordance with the reallocated
24 common expense liabilities.

§36B-3-115. Lien for assessments.

1 (a) The association has a lien on a unit for any assess-
2 ment levied against that unit or fines imposed against its
3 unit owner from the time the assessment or fine becomes due.

4 The association's lien may be foreclosed in like manner as a
5 mortgage on real estate or a power of sale under a deed of
6 trust. Unless the declaration otherwise provides, fees, charges,
7 late charges, fines, and interest charged pursuant to section
8 3-102(10), (11) and (12) are enforceable as assessments under
9 this section. If an assessment is payable in installments, the
10 full amount of the assessment is a lien from the time the first
11 installment thereof becomes due.

12 (b) A lien under this section is prior to all other liens
13 and encumbrances on a unit except (1) liens and encum-
14 brances recorded before the recordation of the declaration,
15 (2) mortgages and deeds of trust on the unit securing first
16 mortgage holders and recorded before the due date of the
17 assessment or the due date of the first installment payable
18 on the assessment, and (3) liens for real estate taxes and
19 other governmental assessments or charges against the unit.
20 To the extent of the common expense assessments made
21 under section 3-114(b) due during the six months immediately
22 preceding institution of an action to enforce the lien, the lien
23 is also prior to the mortgages and deeds of trust described in
24 clause (2) above. This subsection does not affect the priority
25 of mechanics' or materialmen's liens.

26 (c) For the purpose of perfecting and preserving its lien
27 the association shall give notice to the unit owner in the
28 manner set forth in section one, article two, chapter fifty-six
29 of this code, or by registered or certified mail, return receipt
30 requested, and in a form reasonably calculated to inform the
31 owner of his liability for payment of the assessment. The lien
32 shall be discharged as to subsequent purchasers for value
33 without notice unless the association shall cause to be record-
34 ed a notice of the lien in the office of the clerk of the county
35 commission of any county wherein any part of the condo-
36 minium is located. The notice shall contain:

37 (1) A legally sufficient description of the unit;

38 (2) The name or names of the owners of the unit;

39 (3) The amount of unpaid assessments due together with
40 the date when each fell due; and

41 (4) The date of recordation.

42 The clerk of the county commission in whose office the
43 notice is recorded shall index the notice in the appropriate
44 deed books and lien books in the name of the unit owners and
45 of the association. The cost of recordation shall be assessed
46 against any unit owner found to be delinquent in a subsequent
47 proceeding to enforce the lien.

48 Upon payment of the assessment the association shall exe-
49 cute a written release of the lien in the manner set forth in
50 section one, article twelve, chapter thirty-eight of this code.
51 This release shall be recorded, at the expense of the asso-
52 ciation, in the office of the county clerk wherein the notice
53 of the lien was filed.

54 (d) A lien for unpaid assessments is extinguished unless
55 proceedings to enforce the lien are instituted within three
56 years after the assessments become payable.

57 (e) Nothing in this section shall be construed to prohibit
58 actions or suits to recover sums for which subsection (a)
59 creates a lien, or to prohibit an association from taking a
60 deed in lieu of foreclosure.

61 (f) A judgment or decree in any action or suit brought
62 under this section shall include costs and reasonable attor-
63 ney's fees for the prevailing party.

64 (g) The association shall furnish to a unit owner upon
65 written request a recordable statement setting forth the amount
66 of unpaid assessments currently levied against his unit. The
67 statement shall be furnished within ten business days after
68 receipt of the request and is binding on the association, the
69 executive board, and every unit owner.

§36B-3-116. Association records.

1 The association shall keep financial records sufficiently
2 detailed to enable the association to comply with section
3 4-107. All financial and other records shall be made reason-
4 ably available for examination by any unit owner and his
5 authorized agents.

§36B-3-117. Association as trustee.

1 With respect to a third person dealing with the association
2 in the association's capacity as a trustee, the existence of
3 trust powers and their proper exercise by the association
4 may be assumed without inquiry. A third person is not
5 bound to inquire whether the association has power to act
6 as trustee or is properly exercising trust powers and a third
7 person, without actual knowledge that the association is
8 exceeding or improperly exercising its powers, is fully pro-
9 tected in dealing with the association as if it possessed and
10 properly exercised the powers it purports to exercise. A
11 third person is not bound to assure the proper application of
12 trust assets paid or delivered to the association in its capacity
13 as trustee.

ARTICLE 4. PROTECTION OF PURCHASERS.

- §36B-4-101. Applicability; waiver.
- §36B-4-102. Public offering statement; general provisions.
- §36B-4-103. Same—Time-share estates.
- §36B-4-104. Same—Conversion condominiums.
- §36B-4-105. Same—Condominium securities.
- §36B-4-106. Purchaser's right to cancel.
- §36B-4-107. Resales of units.
- §36B-4-108. Escrow of deposits.
- §36B-4-109. Release of liens.
- §36B-4-110. Conversion condominiums.
- §36B-4-111. Warranty against structural defects.
- §36B-4-112. Statute of limitations for warranties.
- §36B-4-113. Effect of violations on rights of action; attorney's fees.
- §36B-4-114. Labeling of promotional material.
- §36B-4-115. Declarant's obligation to complete and restore.

§36B-4-101. Applicability; waiver.

1 (a) This article applies to all units subject to this chapter,
2 except as provided in subsection (b) or as modified or waived
3 by agreement of purchasers of units in a condominium in
4 which all units are restricted to nonresidential use.

5 (b) A public offering statement need not be prepared or
6 delivered in the case of:

- 7 (1) gratuitous transfer of a unit;
- 8 (2) a disposition pursuant to court order;

- 9 (3) a disposition by a government or governmental agency;
- 10 (4) a disposition by foreclosure or deed in lieu of fore-
11 closure;
- 12 (5) a disposition of a condominium situated wholly outside
13 this state pursuant to a contract executed wholly outside this
14 state; or
- 15 (6) a transfer to which section 4-107 (resales of units)
16 applies.

§36B-4-102. Public offering statement; general provisions.

- 1 (a) Except as provided in subsection (b), a public offer-
2 ing statement must contain or fully and accurately disclose:
- 3 (1) the name and principal address of the declarant and
4 of the condominium;
- 5 (2) a general description of the condominium, including
6 without limitation the types, number, and declarant's schedule
7 of commencement and completion of construction of all
8 buildings, units, and amenities;
- 9 (3) the total number of additional units that may be
10 included in the condominium and the proportion of units the
11 declarant intends to rent or market in blocks of units to
12 investors;
- 13 (4) a brief narrative description of any options reserved
14 by a declarant to withdraw withdrawable real estate under
15 section 2-106(1) and the expected effects that withdrawal
16 would have on the remaining portion of the condominium;
- 17 (5) copies and a brief narrative description of the sig-
18 nificant features of the declaration (other than the plats
19 and plans), the bylaws, and rules and regulations, copies
20 of any contracts and leases to be signed by purchasers at
21 closing, and a brief narrative description of any contracts
22 or leases that will or may be subject to cancellation by the
23 association under section 3-105;
- 24 (6) any current balance sheet and a projected budget for
25 the association, either within or as an exhibit to the public
26 offering statement, for one year after the date of the first

27 conveyance to a purchaser, and thereafter the current budget
28 of the association, a statement of who prepared the budget,
29 and a statement of the budget's assumptions concerning oc-
30 cupancy and inflation factors. The budget must include,
31 without limitation:

32 (i) a statement of the amount, or a statement that there
33 is no amount, included in the budget as a reserve for repairs
34 and replacement;

35 (ii) a statement of any other reserves;

36 (iii) the projected common expense assessment by cate-
37 gory of expenditures for the association;

38 (iv) the projected monthly common expense assessment for
39 each type of unit;

40 (7) any services not reflected in the budget that the
41 declarant provides, or expenses that he pays, and that he
42 expects may become at any subsequent time a common expense
43 of the association and the projected common expense assess-
44 ment attributable to each of those services or expenses for
45 the association and for each type of unit;

46 (8) any initial or special fee due from the purchaser at
47 closing, together with a description of the purpose and
48 method of calculating the fee;

49 (9) a description of any liens, defects, or encumbrances
50 on or affecting the title to the condominium;

51 (10) a description of any financing offered by the de-
52 clarant;

53 (11) the terms and significant limitations of any war-
54 ranties provided by the declarant, including statutory war-
55 ranties and limitations on the enforcement thereof or on
56 damages;

57 (12) a statement that:

58 (i) within fifteen days after receipt of a public offering
59 statement a purchaser, before conveyance, may cancel any
60 contract for purchase of a unit from a declarant;

61 (ii) if a declarant fails to provide a public offering state-
62 ment to a purchaser before conveying a unit, that purchaser
63 may recover from the declarant ten percent of the sales
64 price of the unit; and

65 (iii) if a purchaser receives the public offering statement
66 more than fifteen days before signing a contract, he cannot
67 cancel the contract;

68 (13) a statement of any judgments against the association,
69 the status of any pending suits to which the association is
70 a party, and the status of any pending suits material to the
71 condominium of which a declarant has actual knowledge;

72 (14) a statement that any deposit made in connection
73 with the purchase of a unit will be held in an escrow account
74 until closing and will be returned to the purchaser if the
75 purchaser cancels the contract pursuant to section 4-106;

76 (15) any restraints on alienation of any portion of the
77 condominium;

78 (16) a description of the insurance coverage provided for
79 the benefit of unit owners;

80 (17) any current or expected fees or charges to be paid
81 by unit owners for the use of the common elements and other
82 facilities related to the condominium;

83 (18) the extent to which financial arrangements have
84 been provided for completion of all improvements labeled
85 "MUST BE BUILT" pursuant to section 4-115 (declarant's
86 obligation to complete and restore); and

87 (19) all unusual and material circumstances, features, and
88 characteristics of the condominium and the units.

89 (b) If a condominium composed of not more than twelve
90 units is not a flexible condominium and no power is reserved
91 to a declarant to make the condominium part of a larger
92 condominium, group of condominiums, or other real estate, a
93 public offering statement may but need not include the in-
94 formation otherwise required by paragraphs (3), (4), (10),
95 (11), (16), (17), (18) and (19) of subsection (a), and the

96 narrative descriptions of documents required by paragraph
97 (a) (5).

98 (c) A declarant promptly shall amend the public offering
99 statement to report any material change in the information
100 required by this section.

§36B-4-103. Same—Time-share estates.

1 (a) For purposes of this section, "time-share estate"
2 means either:

3 (1) an "interval estate," meaning a combination of (i) an
4 estate for years in a unit, during the term of which title to
5 the unit rotates among the time-share owners thereof, vesting
6 in each of them in turn for periods established by a fixed
7 recorded schedule, with the series thus established recurring
8 regularly until the term expires, coupled with (ii) a vested
9 undivided fee simple interest in the remainder in that unit, the
10 magnitude of that interest having been established by the
11 declaration or by the deed creating the interval estate; or

12 (2) a "time-span estate," meaning a combination of (i) an
13 undivided interest in a present estate in fee simple in a unit,
14 the magnitude of that interest having been established by the
15 declaration or by the deed conveying the time-span estate,
16 coupled with (ii) the exclusive right to possession and occu-
17 pancy of that unit during a regularly recurring period desig-
18 nated by that deed or by a recorded document referred to
19 therein.

20 (b) If the declaration provides that ownership or occu-
21 pancy of the units are or may be owned in time-shares, the
22 public offering statement shall disclose in addition to the
23 information required by section 4-102:

24 (1) the total number of units in which time-share estates
25 may be created;

26 (2) the total number of time-share estates that may be
27 created in the condominium;

28 (3) the projected common expense assessment for each
29 time-share estate and whether those assessments may vary
30 seasonally;

31 (4) a statement of any services not reflected in the budget
32 which the declarant provides, or expenses which he pays,
33 and which he expects may become at any subsequent time a
34 common expense of the association, and the projected common
35 expense assessment attributable to each of those services or
36 expenses for each time-share estate;

37 (5) the extent to which the time-share owners of a unit
38 are jointly and severally liable for the payment of real estate
39 taxes and all assessments and other charges levied against
40 that unit;

41 (6) the extent to which a suit for partition may be main-
42 tained against a unit owned in time-share estates; and

43 (7) the extent to which a time-share estate may become
44 subject to a tax or other lien arising out of claims against
45 other time-share owners of the same unit.

§36B-4-104. Same—Conversion condominiums.

1 (a) The public offering statement of a conversion con-
2 dominium must contain, in addition to the information re-
3 quired by section 4-102:

4 (1) a statement by the declarant, based on a report
5 prepared by an independent architect or engineer, describing
6 the present condition of all structural components and mechani-
7 cal and electrical installations material to the use and enjoy-
8 ment of the condominium;

9 (2) a statement by the declarant of the expected useful
10 life of each item reported on in paragraph (1) or a statement
11 that no representations are made in that regard; and

12 (3) a list of any outstanding notices of uncured violations
13 of building code or other municipal regulations, together with
14 the estimated cost of curing those violations.

15 (b) This section applies only to units that may be oc-
16 cupied for residential use.

§36B-4-105. Same—Condominium securities.

1 If an interest in a condominium is currently registered
2 with the Securities and Exchange Commission of the United

3 States, a declarant satisfies all requirements relating to the
4 preparation of a public offering statement in this chapter if
5 he delivers to the purchaser a copy of the public offering
6 statement filed with the Securities and Exchange Commission.

§36B-4-106. Purchaser's right to cancel.

1 (a) Unless delivery of a public offering statement is
2 not required under section 4-101(b), a declarant shall
3 provide a purchaser of a unit with a copy of the public
4 offering statement and all amendments thereto before con-
5 veyance of that unit, and not later than the date of any
6 contract of sale. Unless a purchaser is given the public
7 offering statement more than fifteen days before execution of
8 a contract for the purchase of a unit, the purchaser, before
9 conveyance, may cancel the contract within fifteen days after
10 first receiving the public offering statement.

11 (b) If a purchaser elects to cancel a contract pursuant
12 to subsection (a), he may do so by hand-delivering notice
13 thereof to the declarant or by mailing notice thereof by
14 prepaid United States mail to the declarant or to his agent
15 for service of process. Cancellation is without penalty, and
16 all payments made by the purchaser before cancellation shall
17 be refunded promptly.

18 (c) If a declarant fails to provide a purchaser to whom
19 a unit is conveyed with a public offering statement and all
20 amendments thereto as required by subsection (a), the pur-
21 chaser, in addition to any rights to damages or other relief,
22 is entitled to receive from the declarant an amount equal to
23 ten percent of the sales price of the unit.

§36B-4-107. Resales of units.

1 (a) In the event of a resale of a unit by a unit owner
2 other than a declarant, the unit owner shall furnish to a
3 purchaser before execution of any contract for sale of a
4 unit, or otherwise before conveyance, a copy of the de-
5 clarant (other than the plats and plans), the bylaws, the
6 rules or regulations of the association, and a certificate
7 containing:

8 (1) a statement disclosing the effect on the proposed
9 disposition of any right of first refusal or other restraint
10 on the free alienability of the unit;

11 (2) a statement setting forth the amount of the monthly
12 common expense assessment and any unpaid common expense
13 or special assessment currently due and payable from the
14 selling unit owner;

15 (3) a statement of any other fees payable by unit owners;

16 (4) a statement of any capital expenditures proposed by
17 the association for the current and two next succeeding
18 fiscal years;

19 (5) a statement of the amount of any reserves for capital
20 expenditures and of any portions of those reserves designated
21 by the association for any specified projects;

22 (6) the most recent regularly prepared balance sheet and
23 income and expense statement, if any, of the association;

24 (7) the current operating budget of the association;

25 (8) a statement of any judgments against the association
26 and the status of any pending suits to which the association
27 is a party;

28 (9) a statement describing any insurance coverage pro-
29 vided for the benefit of unit owners;

30 (10) a statement as to whether the executive board has
31 knowledge that any alterations or improvements to the unit
32 or to the limited common elements assigned thereto violate
33 any provision of the declaration;

34 (11) a statement as to whether the executive board has
35 knowledge of any violations of the health or building codes
36 with respect to the unit, the limited common elements assigned
37 thereto, or any other portion of the condominium; and

38 (12) a statement of the remaining term of any leasehold
39 estate affecting the condominium and the provisions govern-
40 ing any extension or renewal thereof.

41 (b) The association, within ten days after a request by

42 a unit owner, shall furnish a certificate containing the in-
43 formation necessary to enable the unit owner to comply with
44 this section. A unit owner providing a certificate pursuant
45 to subsection (a) is not liable to the purchaser for any
46 erroneous information provided by the association and in-
47 cluded in the certificate.

48 (c) A purchaser is not liable for any unpaid assessment
49 or fee greater than the amount set forth in the certificate
50 prepared by the association. A unit owner is not liable to
51 a purchaser for the failure or delay of the association to
52 provide the certificate in a timely manner, but the purchase
53 contract is voidable by the purchaser until the certificate
54 has been provided and for five days thereafter or until con-
55 veyance, whichever first occurs.

§36B-4-108. Escrow of deposits.

1 Any deposit made in connection with the purchase or re-
2 servation of a unit from a declarant shall be placed in escrow
3 and held in this state in an account designated solely for
4 that purpose by an institution whose accounts are insured
5 by a governmental agency or instrumentality until (1) delivered
6 to the declarant at closing; (2) delivered to the declarant
7 because of purchaser's default under a contract to purchase
8 the unit; or (3) refunded to the purchaser.

§36B-4-109. Release of liens.

1 (a) Before conveying a unit, other than by deed in lieu of
2 foreclosure, to a purchaser other than a declarant, a declar-
3 ant shall record or furnish to the purchaser, releases of all
4 liens affecting that unit and its common element interest which
5 the purchaser does not expressly agree to take subject to or
6 assume. This subsection does not apply to any withdrawable
7 real estate in which no unit has been conveyed.

8 (b) Whether perfected before or after creation of the con-
9 dominium, if a lien other than a deed of trust or mortgage,
10 including a lien attributable to work performed or materials
11 supplied before creation of the condominium, becomes effec-
12 tive against two or more units, the unit owner of an affected
13 unit may pay to the lienholder the amount of the lien attri-

14 butable to his unit, and the lienholder, upon receipt of pay-
15 ment, promptly shall deliver a release of the lien covering that
16 unit and its common element interest. The amount of the
17 payment must be proportionate to the ratio which that unit
18 owner's common expense liability bears to the common ex-
19 pense liabilities of all unit owners whose units are subject to
20 the lien. After payment, the association may not assess or
21 have a lien against that unit owner's unit for any portion of
22 the common expenses incurred in connection with that lien.

§36B-4-110. Conversion condominiums.

1 (a) A declarant of a conversion condominium shall give
2 each of the tenants and any subtenant in possession of
3 buildings subject to this chapter notice of the conversion
4 no later than one hundred twenty days before the declarant
5 will require the tenants and any subtenant in possession to
6 vacate. The notice must set forth generally the rights of
7 tenants and subtenants under this section and shall be
8 hand-delivered to the unit or mailed by prepaid United
9 States mail to the tenant and subtenant at the address of
10 the unit or any other mailing address provided by a tenant.
11 No tenant or subtenant may be required by the declarant to
12 vacate upon less than one hundred twenty days' notice,
13 except by reason of nonpayment of rent, waste, or conduct
14 that disturbs other tenants' peaceful enjoyment of the pre-
15 mises, and the terms of the tenancy may not be altered
16 during that period. Failure of a declarant to give notice as
17 required by this section is a defense to an action for posses-
18 sion.

19 (b) For sixty days after delivery or mailing of the notice
20 described in subsection (a), the declarant shall offer to
21 convey each unit or proposed unit occupied for residential
22 use to the tenant who leases that unit. If a tenant fails to
23 purchase the unit during that sixty day period, the declarant
24 may not offer to dispose of an interest in that unit during the
25 following one hundred eighty days at a price or on terms
26 more favorable to the offeree than the price or terms
27 offered to the tenant. This subsection does not apply to any
28 unit in a conversion condominium if that unit will be
29 restricted exclusively to nonresidential use or the boundaries

30 of the converted unit do not substantially conform to the
31 dimensions of the residential unit before conversion.

32 (c) If a declarant, in violation of subsection (b), conveys
33 a unit to a purchaser for value who has no knowledge of
34 the violation, recordation of the deed conveying the unit
35 extinguishes any right a tenant may have under subsection
36 (b) to purchase that unit if the deed states that the seller
37 has complied with subsection (b), but does not affect the
38 right of a tenant to recover damages from the declarant for
39 a violation of subsection (b).

40 (d) If a notice of conversion specifies a date by which
41 a unit or proposed unit must be vacated, the notice also
42 constitutes a notice to vacate specified by section five,
43 article six, chapter thirty-seven of this code.

44 (e) Nothing in this section permits termination of a lease
45 by a declarant in violation of its terms.

§36B-4-111. Warranty against structural defects.

1 (a) *Definition.*—As used in this section “structural defects”
2 means those defects in components constituting any unit or
3 common element which reduce the stability or safety of the
4 structure below accepted standards or restrict the normal
5 intended use of all or part of the structure and which require
6 repair, renovation, restoration or replacement. Nothing in this
7 section shall be construed to make the declarant responsible
8 for any items of maintenance relating to the units or common
9 elements.

10 (b) *General rule.*—A declarant warrants against structural
11 defects in each of the units for two years from the date each is
12 conveyed to a bona fide purchaser, and all of the common
13 elements for two years. The two years shall begin as to each
14 of the common elements whenever the common element has
15 been completed or, if later:

16 (1) as to any common element within any additional real
17 estate or portion thereof, at the time the first unit therein
18 is conveyed to a bona fide purchaser;

19 (2) as to any common element within any convertible real

20 estate or portion thereof, at the time the first unit therein
21 is conveyed to a bona fide purchaser; and

22 (3) as to any common element within any other portion of
23 the condominium, at the time the first unit therein is con-
24 veyed to a bona fide purchaser.

25 (c) *Limitation for conversion condominiums.*—The declar-
26 ant of a conversion condominium may offer the units, common
27 elements, or both, in “as is” condition in which event the de-
28 clarant’s warranty against structural defects applies only to
29 defects in components installed by declarant or work done by
30 declarant except to the extent that the declarant gives a more
31 extensive warranty in writing.

32 (d) *Exclusion or modification of warranty.*—Except with
33 respect to a purchaser of a unit for residential use, the war-
34 ranty against structural defects:

35 (1) may be excluded or modified by agreement of the par-
36 ties; and

37 (2) is excluded by expression of disclaimer, such as “as
38 is,” “with all faults” or other language which in common
39 understanding calls the buyer’s attention to the exclusion of
40 warranties.

§36B-4-112. Statute of limitations for warranties.

1 (a) A judicial proceeding for breach of any obligation
2 arising under this chapter must be commenced within six
3 years after the cause of action accrues.

4 (b) Subject to subsection (c), a cause of action for breach
5 of any express or statutory warranty, regardless of the pur-
6 chaser’s lack of knowledge of the breach, accrues:

7 (1) as to a unit, at the time the purchaser to whom the
8 warranty is first made enters into possession if a possessory
9 interest was conveyed or at the time of acceptance of the
10 instrument of conveyance, if a nonpossessory interest was
11 conveyed; and

12 (2) as to each common element, at the time the common
13 element is completed or, if later, (i) as to a common element

14 within any additional or convertible real estate or portion
15 thereof, at the time the first unit therein is conveyed to a bona
16 fide purchaser, or (ii) as to a common element within any
17 other portion of the condominium, at the time the first unit
18 in the condominium is conveyed to a bona fide purchaser.

19 (c) If any express or statutory warranty explicitly extends to
20 future performance or duration of any improvement or com-
21 ponent of the condominium, the cause of action accrues at the
22 time the breach is discovered or at the end of the period for
23 which the warranty explicitly extends, whichever is earlier.

§36B-4-113. Effect of violations on rights of action; attorney's fees.

1 If a declarant or any other person subject to this chapter
2 violates any provision thereof or any provision of the
3 declaration or bylaws, any person or class of persons adverse-
4 ly affected by the violation has a claim for appropriate
5 relief. Punitive damages may be awarded in the case of a
6 willful violation of the chapter. The court, in an appropriate
7 case, may award reasonable attorney's fees.

§36B-4-114. Labeling of promotional material.

1 If any improvement contemplated in a condominium is
2 required by section 2-110(b)(3) to be labeled "NEED NOT
3 BE BUILT" on a plat or plan, or is to be located within
4 convertible real estate, no promotional material may be
5 displayed or delivered to prospective purchasers which de-
6 scribes or depicts that improvement unless the description or
7 depiction of the improvement is conspicuously labeled or
8 identified as "NEED NOT BE BUILT."

§36B-4-115. Declarant's obligation to complete and restore.

1 (a) The declarant shall complete all improvements labeled
2 "MUST BE BUILT" on plats or plans prepared pursuant
3 to section 2-110.

4 (b) The declarant is subject to liability for the prompt
5 repair and restoration, to a condition compatible with the
6 remainder of the condominium, of any portion of the con-
7 dominium affected by the exercise of rights reserved pursuant
8 to or created by sections 2-111, 2-112, 2-117 and 2-118.

CHAPTER 130

(H. B. 1473—By Mr. Yanni)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage to two dollars and seventy-five cents per hour; and decreasing from forty-two to forty the maximum allowable work hours per week without overtime compensation.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

§21-5C-2. Minimum wages.

§21-5C-3. Maximum hours; overtime compensation.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the commissioner of labor as chief of
6 the wage and hour division.

7 (c) "Wage" means compensation due an employee by rea-
8 son of his employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the state of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private corpora-

13 tion, or any person or group of persons acting directly or in-
14 directly in the interest of any employer in relation to an em-
15 ployee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment: *Provided*,
18 That the term "employer" shall not include any individual,
19 partnership, association, corporation, person or group of per-
20 sons or similar unit if eighty percent of the persons employed
21 by him are subject to any federal act relating to minimum
22 wage, maximum hours and overtime compensation.

23 (f) "Employee" includes any individual employed by an
24 employer but shall not include: (1) Any individual employed
25 by the United States; (2) any individual engaged in the
26 activities of an educational, charitable, religious, fraternal or
27 nonprofit organization where the employer-employee relation-
28 ship does not in fact exist, or where the services rendered to
29 such organizations are on a voluntary basis; (3) newsboys,
30 shoeshine boys, golf caddies, pin boys and pin chasers in
31 bowling lanes; (4) traveling salesmen and outside salesmen;
32 (5) services performed by an individual in the employ of his
33 parent, son, daughter or spouse; (6) any individual employed in
34 a bona fide professional, executive or administrative capacity;
35 (7) any person whose employment is for the purpose of on-
36 the-job training; (8) any person having a physical or mental
37 handicap so severe as to prevent his employment or employ-
38 ment training in any training or employment facility other
39 than a nonprofit sheltered workshop; (9) any individual em-
40 ployed in a boys or girls summer camp; (10) any person sixty-
41 two years of age or over who receives old-age or survivors
42 benefits from the social security administration; (11) any
43 individual employed in agriculture as the word agriculture is
44 defined in the Fair Labor Standards Act of 1938, as amended;
45 (12) any individual employed as a fire fighter by the state
46 or agency thereof; (13) ushers in theaters; (14) any individual
47 employed on a part-time basis who is a student in any recog-
48 nized school or college; (15) any individual employed by a
49 local or interurban motorbus carrier; (16) so far as the maxi-
50 mum hours and overtime compensation provisions of this
51 article are concerned, any salesman, parts man or mechanic
52 primarily engaged in selling or servicing automobiles, trailers,

53 trucks, farm implements, or aircraft if employed by a non-
54 manufacturing establishment primarily engaged in the business
55 of selling such vehicles to ultimate purchasers; or (17) any
56 employee with respect to whom the United States department
57 of transportation has statutory authority to establish quali-
58 fications and maximum hours of service.

59 (g) "Workweek" means a regularly recurring period of one
60 hundred sixty-eight hours in the form of seven consecutive
61 twenty-four-hour periods, need not coincide with the calen-
62 dar week, and may begin any day of the calendar week and
63 any hour of the day.

64 (h) "Hours worked," indetermining for the purposes of sec-
65 tions two and three of this article, the hours for which an
66 employee is employed, there shall be excluded any time spent
67 in changing clothes or washing at the beginning or end of each
68 workday, time spent in walking, riding or traveling to and
69 from the actual place of performance of the principal activity
70 or activities which such employee is employed to perform and
71 activities which are preliminary to or postliminary to said
72 principal activity or activities, subject to such exceptions as
73 the commissioner may by rules and regulations define.

§21-5C-2. Minimum wages.

1 After the thirty-first day of December, one thousand nine
2 hundred eighty, every employer shall pay to each of his em-
3 ployees wages at a rate not less than two dollars and seventy-
4 five cents per hour.

§21-5C-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty, no employer shall employ any of his
3 employees for a workweek longer than forty hours, unless
4 such employee receives compensation for his employment
5 in excess of the hours above specified at a rate of not
6 less than one and one-half times the regular rate at which
7 he is employed.

8 (b) As used in this section the "regular rate" at which
9 an employee is employed shall be deemed to include all

10 remuneration for employment paid to, or on behalf of, the
11 employee, but shall not be deemed to include:

12 (1) Sums paid as gifts; payments in the nature of gifts
13 made at Christmas time or on other special occasions, as a
14 reward for service, the amounts of which are not measured by
15 or dependent on hours worked, production, or efficiency;

16 (2) Payments made for occasional periods when no work is
17 performed due to vacation, holiday, illness, failure of the
18 employer to provide sufficient work, or other similar cause;
19 reasonable payments for traveling expenses, or other ex-
20 penses, incurred by an employee in the furtherance of his
21 employer's interests and properly reimbursable by the em-
22 ployer, and other similar payments to an employee which
23 are not made as compensation for his hours of employment;

24 (3) Sums paid in recognition of services performed during
25 a given period if either: (a) Both the fact that payment
26 is to be made and the amount of the payment are deter-
27 mined at the sole discretion of the employer at or near the
28 end of the period and not pursuant to any prior contract,
29 agreement or promise causing the employee to expect such
30 payments regularly; or (b) the payments are made pursuant
31 to a bona fide profit-sharing plan or trust or bona fide
32 thrift or savings plan, meeting the requirements of the com-
33 missioner set forth in appropriate regulation which he shall
34 issue, having due regard among other relevant factors, to
35 the extent to which the amounts paid to the employee are
36 determined without regard to hours of work, production or
37 efficiency; or (c) the payments are talent fees (as such talent
38 fees are defined and delimited by regulations of the com-
39 missioner) paid to performers, including announcers, on radio
40 and television programs;

41 (4) Contributions irrevocably made by an employer to a
42 trustee or third person pursuant to a bona fide plan for
43 providing old-age, retirement, life, accident, or health insurance
44 or similar benefits for employees;

45 (5) Extra compensation provided by a premium rate paid
46 for certain hours worked by the employee in any day or
47 workweek because such hours are hours worked in excess of
48 eight in a day or in excess of the maximum workweek ap-

49 plicable to such employee under subsection (a) or in excess
50 of the employee's normal working hours or regular working
51 hours, as the case may be;

52 (6) Extra compensation provided by a premium rate paid
53 for work by the employee on Saturdays, Sundays, holidays or
54 regular days of rest, or on the sixth or seventh day of the
55 workweek, where such premium rate is not less than one and
56 one-half times the rate established in good faith for like
57 work performed in nonovertime hours on other days; or

58 (7) Extra compensation provided by a premium rate paid
59 to the employee, in pursuance of an applicable employment
60 contract or collective bargaining agreement, for work outside
61 of the hours established in good faith by the contract or
62 agreement as the basic, normal or regular workweek where
63 such premium rate is not less than one and one-half times
64 the rate established in good faith by the contract or agreement
65 for like work performed during such workweek.

66 (c) No employer shall be deemed to have violated subsec-
67 tion (a) by employing any employee for a workweek in excess
68 of the maximum workweek applicable to such employee under
69 subsection (a) if such employee is employed pursuant to a
70 bona fide individual contract, or pursuant to an agreement
71 made as a result of collective bargaining by representatives
72 of employees, if the duties of such employee necessitate irre-
73 regular hours of work, and the contract or agreement (1) speci-
74 fies a regular rate of pay of not less than the minimum hourly
75 rate provided in section two and compensation at not less than
76 one and one-half times such rate for all hours worked in ex-
77 cess of such maximum workweek, and (2) provides a weekly
78 guaranty of pay for not more than sixty hours based on the
79 rates so specified.

80 (d) No employer shall be deemed to have violated sub-
81 section (a) by employing any employee for a workweek in
82 excess of the maximum workweek applicable to such employee
83 under such subsection if, pursuant to an agreement or under-
84 standing arrived at between the employer and the employee
85 before performance of the work, the amount paid to the em-
86 ployee for the number of hours worked by him in such work-

87 week in excess of the maximum workweek applicable to such
88 employee under such subsection:

89 (1) In the case of an employee employed at piece rates,
90 is computed at piece rates not less than one and one-half
91 times the bona fide piece rates applicable to the same work
92 when performed during nonovertime hours; or

93 (2) In the case of an employee performing two or more
94 kinds of work for which different hourly or piece rates have
95 been established, is computed at rates not less than one and
96 one-half times such bona fide rates applicable to the same
97 work when performed during nonovertime hours; or

98 (3) Is computed at a rate not less than one and one-half
99 times the rate established by such agreement or understand-
100 ing as the basic rate to be used in computing overtime com-
101 pensation thereunder: *Provided*, That the rate so established
102 shall be authorized by regulation by the commissioner as be-
103 ing substantially equivalent to the average hourly earnings of
104 the employee, exclusive of overtime premiums, in the particu-
105 lar work over a representative period of time; and if (i) the
106 employee's average hourly earnings for the workweek exclusive
107 of payments described in subdivisions (1) through (7) of sub-
108 section (b) are not less than the minimum hourly rate required
109 by applicable law, and (ii) extra overtime compensation is
110 properly computed and paid on other forms of additional pay
111 required to be included in computing the regular rate.

112 (e) Extra compensation paid as described in subdivisions
113 (5), (6) and (7) of subsection (b) shall be creditable toward
114 overtime compensation payable pursuant to this section.

CHAPTER 131

(S. B. 515—By Mr. Nelson)

[Passed March 6, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter one hundred fifty-seven, acts of the
Legislature, regular session, one thousand nine hundred

forty-five, as amended, by adding thereto a new section, designated section fourteen, relating to the construction, acquisition, equipment, operation and maintenance of a general hospital in Cabell County; authorizing and relating to the issuance of revenue bonds by the board of trustees of said general hospital to finance the cost of construction and acquisition of additions, betterments, enlargements, extensions and improvements to, and equipment and furnishings for, said general hospital, including any property necessary therefor; and setting forth the terms and provisions for such revenue bonds.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

CONSTRUCTION OF A GENERAL HOSPITAL IN CABELL COUNTY.

§14. Board authorized to issue revenue bonds to finance additions, improvements and equipment; terms of provisions of bonds.

1 The board shall have the authority, as provided in this
 2 section, to issue revenue bonds to finance the cost of
 3 acquisition and construction of additions, betterments,
 4 enlargements, extensions and improvements to and equip-
 5 ment and furnishings for, the Cabell County general hos-
 6 pital. The cost of said acquisition and construction shall
 7 include the costs of all appurtenances, necessary interests
 8 in real estate, legal fees, architectural and inspection fees,
 9 costs of issuance of such bonds, interest on such bonds
 10 during and for six months after completion of said acqui-
 11 sition and construction and such other costs as are
 12 necessarily and properly incurred in said financing acqui-
 13 sition, construction or placing in operation of the addi-
 14 tions, betterments, enlargements, extensions, improve-
 15 ments, equipment, furnishings. The bonds shall be payable
 16 only from the net revenues derived from the operation of
 17 the Cabell County general hospital.

18 The issuance of such bonds shall be authorized by a

19 resolution adopted by the board; and such revenue bonds
20 shall bear such date or dates; mature at such time or times
21 not exceeding forty years from their respective dates; be
22 in such form either coupon or registered, with such ex-
23 changeability and interchangeability privileges; be pay-
24 able in such medium of payment and at such place or
25 places, within or without the state, be subject to such
26 terms of prior redemption at such prices; and shall have
27 such other terms and provisions as the board shall de-
28 termine. Such revenue bonds shall be signed by the
29 chairman of the board under the seal of the board attested
30 by the secretary of the board, and the coupons attached
31 thereto shall bear the facsimile signature of the chairman
32 of the board. Such revenue bonds shall be sold in such a
33 manner as the board may determine to be in the best in-
34 terests of the Cabell County general hospital.

35 The board may enter into trust agreements with banks
36 or trust companies, within or without the state, and in
37 such trust agreements or the resolutions authorizing the
38 issuance of such bonds may enter into valid and legally
39 binding covenants with the holders of such revenue bonds
40 as to the custody, safeguarding and disposition of the
41 proceeds of such revenue bonds, the moneys in sinking
42 funds, reserve funds, or any other moneys or funds; as to
43 the rank and priority, if any, of different issues of revenue
44 bonds under the provisions of this section; and as to any
45 other matters or provisions which are deemed necessary
46 and advisable by the board in the best interests of the
47 hospital and to enhance the marketability of such revenue
48 bonds.

49 Such revenue bonds shall be and constitute negotiable
50 instruments under the uniform commercial code of the
51 state and shall, together with the interest thereon, be
52 exempt from all taxation by the state of West Virginia, or
53 by any county, school district, municipality or political
54 subdivision thereof; and such revenue bonds shall not be
55 deemed to be obligations or debts of either Cabell County
56 or the city of Huntington, and the credit or taxing power
57 of neither said county nor said city shall be pledged

58 therefor, but such revenue bonds shall be payable only
59 from the net revenues pledged therefor as provided in
60 this section.

CHAPTER 132

(S. B. 333—By Mr. Harman and Mr. Hinkle)

[Passed February 22, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter one hundred sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-one, relating to the Grant County courthouse building and improvement fund; authority of county commission to transfer unexpended funds therefrom.

Be it enacted by the Legislature of West Virginia:

That section one, chapter one hundred sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-one, be amended and reenacted to read as follows:

GRANT COUNTY COURTHOUSE BUILDING AND IMPROVEMENT FUND.

§1. Grant county commission authorized to create special courthouse building and improvement fund.

1 The county commission of Grant County is hereby
2 authorized and empowered to create a special courthouse
3 building and improvement fund, and, from year to year,
4 to transfer to such special fund any surplus or unex-
5 pended funds in its general county funds. Said county
6 commission is further authorized and empowered to use
7 and expend the special fund created under authority of
8 this act for the purpose of making repairs and improve-
9 ments, including additions, to the present courthouse,
10 or for constructing and equipping a new courthouse at
11 the county seat of Grant County.

12 Any time that the county commission may determine
13 that the funds in the account created herein are not
14 needed for the purpose for which it was created, the
15 county commission may transfer such funds to the county
16 general fund or to any other special fund.

CHAPTER 133

(H. B. 1042—By Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Greenbrier County to make expenditures from the county general fund for the support of the Greenbrier County Youth Camp.

Be it enacted by the Legislature of West Virginia:

GREENBRIER COUNTY YOUTH CAMP.

§1. Support of Greenbrier County Youth Camp.

1 The county commission of Greenbrier County is hereby
2 authorized, in its discretion, to expend a sum of money not
3 to exceed fifteen thousand dollars per year from the general
4 fund of that county for the support of the Greenbrier County
5 Youth Camp in employing a camp director.

CHAPTER 134

(Com. Sub. for H. B. 1025—By Mr. Harman)

[Passed February 22, 1980; in effect from passage. Approved by the Governor.]

AN ACT to authorize the sale by the board of regents of two and one-half acres of land to the Keyser Church of Assumption for use as a graveyard.

Be it enacted by the Legislature of West Virginia:

SALE OF REGENTS LAND TO KEYSER CHURCH OF ASSUMPTION.

§1. Board of regents authorized to sell land to the Keyser Church of Assumption for use as a graveyard.

- 1 The board of regents is hereby authorized and empowered
- 2 to sell a two and one-half acre tract of land located in Mineral
- 3 County to the legal and ecclesiastical representatives of the
- 4 Keyser Church of Assumption for use as a graveyard at an
- 5 agreed price not less than an independently appraised value.
- 6 The proceeds from such sale shall be utilized by the board of
- 7 regents for capital improvements at Potomac State College.

CHAPTER 135

(Com. Sub. for H. B. 1546—By Mrs. Hartman)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to authorize the sale by the board of regents of the former residence of the president of Marshall University located at 1515 Fifth Avenue in Huntington at auction for a price not less than the average appraised value; and designating that proceeds be deposited in a Marshall University land acquisition account.

Be it enacted by the Legislature of West Virginia:

SALE OF REGENTS LAND IN HUNTINGTON TO HIGHEST BIDDER.

- §1. Board of regents authorized to sell former residence of president of Marshall University.
- §2. Proceeds to be deposited in Marshall University land acquisition account.
- §1. **Board of regents authorized to sell former residence of president of Marshall University.**

- 1 The board of regents is hereby authorized and empowered
- 2 to sell a house and lot, designated as Lot 3 and east 20 feet
- 3 of Lot 2, Block 165, Gideon District, Cabell County, West

4 Virginia, which is the former residence of the president of
5 Marshall University, located at 1515 Fifth Avenue in Hunt-
6 ington at a public auction: *Provided*, That prior to such auc-
7 tion the board of regents shall have the property appraised by
8 two licensed appraisers and shall not sell the property for less
9 than the average of the two appraisals.

§2. Proceeds to be deposited in Marshall University land acquisition account.

1 The proceeds from the sale of the property referred to in
2 section one shall be deposited in a Marshall University land
3 acquisition account for the purpose of future land acquisition
4 by Marshall University.

RESOLUTIONS

COMMITTEE SUBSTITUTE FOR HOUSE CONCURRENT RESOLUTION NO. 9

(By Mr. Mathis, et al.)

[Adopted January 28, 1980.]

Requesting the Congress of the United States to propose an amendment to the United States Constitution for ratification by the states which will protect the life of all human beings including unborn children at every stage of their biological development.

WHEREAS, Millions of abortions have been performed in this country since the Supreme Court of the United States rendered its landmark opinion concerning abortion laws on January 22, 1973; and

WHEREAS, Since such decision there has been in the United States an unending controversy over the issue of an unborn person's right to life; and

WHEREAS, It is the firm belief of the Legislature of West Virginia that there should be a uniform and consistent law among all the states concerning an unborn person's right to life; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia hereby urges the Congress of the United States to propose a constitutional amendment that will protect the life of all human beings including unborn children at every stage of their biological development; and, be it

Further Resolved, That certified copies of this resolution be presented to the president and secretary of the Senate of the United States, the speaker and clerk of the House of Representatives of the United States, and to each member of the Congress from this State attesting the adoption of this resolution by the Legislature of the State of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 10

(By Mr. Wright)

[Adopted January 23, 1980.]

Urging the release of the fifty American hostages held in Iran.

WHEREAS, The fifty Americans have been held against their will since November 4, 1979; and

WHEREAS, Forty-nine of the fifty American hostages were part of the diplomatic corps sent to Iran at the request and consent of the Ayatollah Khomeini; and

WHEREAS, The continued holding of the hostages is a breach of International Law, peace and "fair play"; and

WHEREAS, The further detention of the fifty American hostages is not in the best interests of Iran; therefore, be it

Resolved by the Legislature of West Virginia:

That the American hostages be released and returned unharmed to the United States immediately; and, be it

Further Resolved, That a certified copy of this resolution be sent to the Iranian Embassy in Washington, D. C.

HOUSE CONCURRENT RESOLUTION NO. 16

(By Messrs. Holt, Whitlow, Anello, Christian,
Shiflet and Goodwin)

[Adopted February 19, 1980.]

Expressing the strong disapproval of the West Virginia Legislature of and urging the immediate termination of all federal studies and proposals for pumped storage hydroelectric power facilities on the New River at or near Bluestone Reservoir in Summers County, West Virginia.

WHEREAS, On May 10, 1962, the House of Representatives of the United States Congress authorized the United States Army Corps of Engineers to study the Kanawha Valley drainage area for potential hydroelectric power facilities; and

WHEREAS, Under that authorization the Corps of Engineers is planning and proposing the construction of pumped storage hydroelectric power facilities for the Bluestone Reservoir-New River area of Summers County, West Virginia; and

WHEREAS, Any such pumped storage facilities would remove from 1,800 to 9,300 acres from the real property taxation of Summers County, thereby removing much valuable property from local taxation; and

WHEREAS, The Corps of Engineers is incessantly planning and proposing more and more pumped storage hydroelectric power dams and facilities for those parts of Summers, Mercer and Monroe Counties adjacent to the New River; and

WHEREAS, Modern coal-fired steam generating power plants can clearly produce electricity cheaper than any pumped-storage facilities in this area of West Virginia where coal is an abundant energy resource; and

WHEREAS, It would shock the conscience and confound the judgment to try to explain to the thousands of out-of-work coal miners in southern West Virginia that their Federal Government is going to use their tax money to build pumped storage facilities that operate at a cost of four dollars to pump up and generate three dollars worth of electricity in lieu of using and promoting the use of low sulfur, high B.T.U. coal so abundant in southern West Virginia; and

WHEREAS, At this critical time when matters of energy, economy and environment have been repeatedly represented to the American public by the President of the United States as being the moral equivalent of war, it is gross abuse of public trust for the Federal Government to propose any pumped storage facilities for southern West Virginia; and

WHEREAS, The Nation and the State of West Virginia are on the brink of meeting their peak power energy needs with low sulfur, high B.T.U. West Virginia coal, low head generators, methane gas, storage batteries, wind, sun, heat from the earth, tidal wave power, wood heat and other such energy sources; and

WHEREAS, Any such pumped storage facilities would significantly adversely change the water quality of the New River; and

WHEREAS, Any such pumped storage facility would destroy the Bluestone Public Hunting and Fishing Area, which is the second largest facility of its kind in the State of West Virginia, and would also destroy one of the best canoe white water rivers in the Eastern United States; and

WHEREAS, With the Nation already losing from two to three million acres of farmland each year to dams, roadways and urban development, it is not in the best interests of the United States to unnecessarily destroy and waste the homes and farms of approximately fifty families along with churches, cemeteries, roads and other structural, cultural and environmental aspects of the affected communities; and

WHEREAS, Electricity consumers would have to unfairly, unjust and unreasonably pay for the construction and operation of these uneconomic, environmentally undesirable and energywise unnecessary pumped storage facilities with higher electric bills and higher land taxes; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of West Virginia hereby expresses its strong disapproval of and urges the immediate termination of all federal studies and proposals for pumped storage hydroelectric power facilities on the New River at or near Bluestone Reservoir in Summers County, West Virginia; and, be it

Further Resolved, That the Clerk of the House of Delegates send copies of this resolution to each member of the House Public Works Committee of the United States House of Representatives, each member of the West Virginia Congressional delegation and the President of the United States.

HOUSE CONCURRENT RESOLUTION NO. 19

(Originating in the House Committee on Rules)

[Adopted January 30, 1980.]

Urging support of President Carter's proposal for the athletes, Olympic Committee and people of the United States and other nations to boycott and not participate in the International

Olympic Games scheduled to be held in the summer of 1980 in the Soviet Union, with such boycott to constitute a clear act of denunciation of the dastardly invasion and intervention by the Soviet Union in the sovereign affairs of the nation of Afghanistan; and with such boycott to continue unless the Soviet Union withdraws its troops and presence from Afghanistan by February 20, 1980, or unless the site for the holding of such games is changed or such games are canceled.

WHEREAS, Participation in the International Olympic Games is symbolic of the community of interests, friendship and respect between the nations and peoples of the world and their dedication to fundamental doctrines of fairness, a striving for the best, and the reward of honest achievement; and

WHEREAS, Attendance and participation in the International Olympic Games within the borders of a particular host nation constitutes an act of recognition by other participating nations that such host nation is a member of the world community believing in and capable of meeting such standards; and

WHEREAS, The Soviet Union has undertaken, as an action of open national policy, to invade and intervene in the sovereign affairs of its neighbor, the nation of Afghanistan, and has thus posed itself as a direct threat to world peace, to the vital interests of the United States and of all nations in the Middle East area, and has thus divorced itself from the community of nations; therefore, be it

Resolved by the Legislature of West Virginia:

That the proposal of President Carter for the athletes, Olympic Committee and people of the United States and other nations to boycott and not participate in the International Olympic Games scheduled to be held in the summer of 1980 in the Soviet Union be fully supported, with such boycott to constitute a clear act of denunciation of the dastardly invasion and intervention by the Soviet Union in the sovereign affairs of the nation of Afghanistan; and with such boycott to continue unless the Soviet Union withdraws its troops and presence from Afghanistan by February 20, 1980, or unless the site for the holding of such games is changed to a location not within the Soviet Union or such games are canceled; and, be it

Further Resolved, That certified copies of this resolution be presented to the President of the United States, the United States Olympic Committee, the President and Secretary of the Senate of the United States, the Speaker and Clerk of the House of Representatives of the United States, and to each member of the Congress from this State attesting the adoption of this resolution by the Legislature of the State of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 53

(By Mr. Martin, 35th Dist., and Mr. Albright)

[Adopted March 8, 1980.]

Approving in part and disapproving in part the Public Service Commission's General Order No. 195, Rule for Reorganization and directing that a supplemental rule be issued and that certain reports be made to the Regular Session of the Legislature in the year one thousand nine hundred eighty-one.

WHEREAS, Pursuant to the provisions of Enrolled H. B. 1280 (Regular Session 1979), passed by the West Virginia Legislature on the tenth day of March, one thousand nine hundred seventy-nine, the Public Service Commission was directed to make certain reports, more particularly itemized therein, to the Legislature and to undergo a thorough internal reorganization; and

WHEREAS, By said Enrolled H. B. 1280 (Regular Session 1979) the Public Service Commission was directed to incorporate within said reorganization plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, one thousand nine hundred seventy-nine, and entitled "A Plan for Regulatory Reform and Management Improvement"; and

WHEREAS, Pursuant to said H. B. 1280 the Public Service Commission has filed those certain reports and its plan for reorganization; and

WHEREAS, Said reports and plan for reorganization have been thoroughly studied for compliance with the directive of Enrolled

H. B. 1280 (Regular Session 1979) and the recommendations of said final report; and

WHEREAS, The Legislature complied with the recommendation of said report and did not pass an overly detailed statute or in any way unnecessarily restrict the policy and management flexibility required by the Public Service Commission; and

WHEREAS, The Legislature recognizes the severe time constraints placed upon the Public Service Commission in its efforts to comply with the directive of said Enrolled H. B. 1280 and commends it for its full and complete cooperation with the Legislature and appreciates its diligence in its efforts to comply with said Enrolled H. B. 1280 while still carrying out and performing its other many and varied responsibilities in a highly satisfactory and professional manner; and

WHEREAS, It appears that the Public Service Commission has not completed the development of its independent knowledge of and capacity to analyze key conditions and trends in the industries it regulates to include industry analysis and supply and demand forecasting; and

WHEREAS, The Public Commission Rule for Reorganization did not make specific recommendations respecting its efforts to attract and retain a highly skilled staff, and, specifically did not include in its Rule a statement concerning the technical and professional personnel it needs to execute the responsibilities assigned to it by law, the present provision for such technical and professional personnel, the time table for hiring and the specific qualifications needed for the additional technical and professional personnel required by the commission, the added capabilities expected to be attained by the commission where such additional technical and professional personnel are hired and the proposed salary levels for such technical and professional personnel; and

WHEREAS, Provisions for the creation of a consumer advocate division do not ensure the representation before the commission of the competing interests of each class of consumers and do not provide a means for such consumer advocate to appeal the orders of the commission and in no manner addresses how such division will be departmentally and financially independent; and

WHEREAS, Any change in the Rule for Reorganization relative to the consumer advocate may require that the commission review the provisions of such Rule regarding ex parte communication between the different divisions within the Public Service Commission; and

WHEREAS, The Public Service Commission has not given sufficient indication to the Legislature that it has secured an independent facility for housing its operation; and

WHEREAS, The Public Service Commission has not resolved the questions of whether they will or do have a director of management systems and a personnel manager; and

WHEREAS, The Public Service Commission report entitled "Extent and Effect of Shut-in Gas Wells in West Virginia, 1980, is said by the Public Service Commission to be based at least in part on unreliable and speculative statistical data depriving the conclusions therein of adequate credibility; and

WHEREAS, The Public Service Commission report entitled "Electric Supply and Demand Balance, 1979-1989" is based primarily on information and forecasts supplied by the regulated industries; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby approves in part and disapproves in part the Public Service Commission Rule for Reorganization, General Order No. 195, issued by the Public Service Commission pursuant to the provisions of subsection (f), section one, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as hereinafter set forth; and, be it

Further Resolved, That said Rule for Reorganization is disapproved insofar as it does not provide a plan to attract and retain a highly skilled staff and does not provide a plan for attracting the additional technical and professional personnel, if any, which it needs to execute the responsibilities assigned to it and does not provide a time table for the hiring of and the specific qualifications needed for such additional technical and professional personnel required by the commission and does not provide a description of the new capabilities, if any, expected to be acquired by the commission

when such technical and professional personnel are hired and does not clearly provide for the proposed salary levels for such additional technical and professional personnel; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved in that it does not fully provide for the development by the Public Service Commission of its independent knowledge of and capacity to analyze key conditions and trends in the industries it regulates and to effectively forecast supply and demand needs in the gas and electric utility industries; and, be it

Further Resolved, That the provisions of said Rule for Reorganization relating to the creation of a consumer advocate division are hereby disapproved insofar as it does not provide for:

1. An office of consumer affairs within the secretary's office to administer the Public Service Commission consumer complaint system, including motor carrier complaints and provide liaison with and assistance to consumer intervenors in Public Service Commission cases,

2. The means by which the commission will authorize and direct the consumer advocate division to advocate the interests of residential consumers in each major rate case before the commission and in such other cases as the consumer advocate division may determine,

3. The means by which the commission will provide freedom of action to the consumer advocate division, or some part thereof, to appeal the orders of the commission determined by the division to be adverse to the residential consumers' position presented before the commission, by whatever legal means or strategy the advocate division may determine. Specifically the Legislature recommends that the commission consider creating a special appellate advocacy section free to determine which cases to appeal, free to prepare, request and apply before the Legislature for a separate appropriation for the appellate advocacy section, or the consumer advocate division, such section to be under supervision of a director, who may also be the director of the division: *Provided*, That the commission and the Joint Committee on Government and Finance or a designated subcommittee thereof, shall also consult upon and the commission shall include in such rule, appropriate provisions for

a legislative consumer committee, which shall effectively oversee the operations of the consumer advocate division,

4. The capability of the consumer advocate division to also advocate the interests of a class of nonresidential consumers which interests may conflict with those of residential consumers, and

5. The provision for adequate technical and professional staff, offices, equipment and budget for the division so as to provide for the departmental and financial independence of the consumer advocate; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved insofar as it does not indicate to the Legislature that the Public Service Commission has secured an independent facility for housing its operation or a time table for doing so; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved insofar as it does not address the employment of a Director of Management Systems having the responsibility and capability of providing the expertise described in Chapter VI, pages 25, 32 and 38, et seq. of the consultants report dated February, 1979, and entitled "A Plan for Regulatory Reform and Management Improvement," including particularly data processing and other management systems, and did not address the subject of a personnel manager; and, be it

Further Resolved, That the Rule for Reorganization is disapproved insofar as it does not provide for the process of amendment thereof, including the process of consultation with and comment by the Legislature as the Joint Committee on Government and Finance or the appropriate subcommittee thereof before any such amendment is made effective; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved insofar as it does not provide for an annual report respecting the progress of the Railroad Safety Division in the promulgation and enforcement of railroad safety rules of the Public Service Commission and the enforcement of federal law assigned to that division; and, be it

Further Resolved, That the Department of Finance and Administration do assist the Public Service Commission in its efforts to

promptly find and utilize an independent facility to house its operation; and, be it

Further Resolved, That the Public Service Commission report to the Legislature on the first day of the Regular Session, one thousand nine hundred eighty-one, on the effect and extent of gas well shut-ins in West Virginia and make every effort to base such report on reliable data, deriving conclusions therefrom and making recommendations to the Legislature on what actions should be taken; and, be it

Further Resolved, That the Public Service Commission report to the Legislature on the first day of the Regular Session, one thousand nine hundred eighty-one, on the current balance of supply and demand for natural gas and electric utility services in West Virginia and a forecast of the probable balance of such supply and demand for the next ten years using its own analysis in addition to that information and analysis supplied by the regulated utilities; and reporting upon the development of its own capability of doing the analysis required for such report; and, be it

Further Resolved, That the Public Service Commission consult on a regular basis with the Joint Committee on Government and Finance, or the appropriate subcommittee thereof and report in a comprehensive manner to the Legislature on the first day of the Regular Session, one thousand nine hundred eighty-one, on its progress in effecting the Plan for Reorganization given; and, be it

Further Resolved, That except as disapproved herein, the said Public Service Commission Rule for Reorganization, General Order No. 195, is, in all other respects, approved.

SENATE CONCURRENT RESOLUTION NO. 8

(By Mr. Colombo, Mr. Boettner, Miss Herndon and
Mr. Gilligan)

[Adopted February 5, 1980.]

Urging the government of the United States of America to maintain diplomatic relations with the Republic of China and adopting Taiwan as a sister state.

WHEREAS, The Republic of China is of great strategic importance in the defense of East Asia and the Pacific against Communism; and

WHEREAS, The people of the Republic of China have been among the most trusted friends of the people of the United States since the founding of the Chinese Republic in 1912; and

WHEREAS, The commercial, cultural and other nongovernmental relations between the American people and the Republic of China are now and have always been excellent and mutually beneficial; and

WHEREAS, The people of West Virginia wish to conduct and carry out numerous economic and cultural programs, transactions and other relations with the people of the Republic of China, and Taiwan; and

WHEREAS, West Virginia coal is now being purchased in large quantity by Taiwan Power Company, and it is the hope that further and future purchases of West Virginia coal and other products of West Virginia will be forthcoming; and

WHEREAS, The Legislature has strong reason to believe that it is the will and pleasure of the people of this State that diplomatic relations be maintained with the Republic of China and that Taiwan be adopted as a sister state; therefore, be it

Resolved by the Legislature of West Virginia:

That the government of the United States of America is hereby urged to maintain dipolmatic relations with the government of the Republic of China; and, be it

Further Resolved, That Taiwan is hereby adopted as West Virginia's sister state; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President of the United States of America, the Clerk of the United States Senate, the Clerk of the United States House of Representatives and the chief executive officer of the government of the Republic of China, and the Speaker of the Provincial Legislature of Taiwan.

SENATE CONCURRENT RESOLUTION NO. 27

(By Mr. Harman, et al.)

[Adopted March 6, 1980.]

Urging the Veterans Administration to reopen the national cemetery at Grafton, West Virginia.

WHEREAS, The United Veterans Committee of West Virginia organized and composed of every major veteran organization including the American Legion, Veterans of Foreign Wars, Veterans of World War I, Disabled American Veterans, Retired Officers Association and the Military Order of the Purple Heart has initiated action toward the reopening of West Virginia's only national cemetery at Grafton; and

WHEREAS, The national cemetery at Grafton has served for over one hundred years as West Virginia's patriotic focal point for memorial services honoring the heroic dead; and

WHEREAS, The United Veterans National Cemetery Committee has met the basic criteria of the Veteran's Administration and has worked closely with the Veteran's Administration for the past two years on the reopening of the national cemetery; and

WHEREAS, The Veteran's Administration has requested an impact study before the national cemetery is reopened instead of recommending the immediate reopening of the cemetery; and

WHEREAS, The delay in the impact study will deny approximately 275,000 West Virginians the privilege of being buried in West Virginia soil in a reverent and hallowed military grave; and

WHEREAS, The United Veterans National Cemetery Committee has received endorsement of their goal of the immediate reopening of the national cemetery from Governor Rockefeller, Senator Byrd, Senator Randolph, Congressman Mollohan, Congressman Staggers, Congressman Slack and Congressman Rahall; therefore, be it

Resolved by the Legislature of West Virginia:

That the national cemetery at Grafton be ordered reopened immediately pursuant to Chapter 24, Title 38 of the United States Code Annotated; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to President Carter.

HOUSE JOINT RESOLUTION NO. 13

(By Mr. Gvoyich, et al.)

[Adopted March 8, 1980.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section thirty-six, article six thereof, relating to empowering the Legislature to authorize, regulate and control bingo games and raffles for charitable or public service groups; providing for local elections to disallow bingo games and raffles; providing that all proceeds from bingo games and raffles be used in support of charitable or public service purposes; providing mandatory penalties; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next primary or general election to be held in the year one thousand nine hundred eighty, which proposed amendment is that section thirty-six, article six be amended to read as follows:

ARTICLE VI. THE LEGISLATURE.**§36. Lotteries prohibited; exception for bingo; county option.**

The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State; except that the Legislature may authorize state (regulated) bingo games and raffles for the purpose of raising money by charitable or public service organizations or the state fair of West Virginia for charitable or public service purposes: *Provided*, That each county may disapprove the holding of bingo games and raffles within that county at a regular, primary or special election but once having disapproved such activity, may thereafter authorize the holding of bingo games and raffles, by majority vote at a regular, primary, or special election held not sooner than five years after the election resulting in disapproval; that all proceeds from the bingo games and raffles be used for the purpose of supporting charitable or public service purposes; and that the Legislature shall provide a means of regulat-

~~ing the bingo games and raffles so as to ensure that only charitable or public service purposes are served by the conducting of the bingo games and raffles.~~

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "West Virginia Bingo Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit the Legislature to pass laws authorizing state controlled bingo games and raffles for charitable or public service organizations."

HOUSE JOINT RESOLUTION NO. 39

(By Mr. Caudle and Mr. Chambers)

[Adopted March 8, 1980.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-b, article ten thereof, relating to an exemption from ad valorem taxation of the first ten thousand dollars valuation of real property or a mobile home occupied as a residence by the owner who is sixty-five years of age or older or permanently and totally disabled; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred eighty, which proposed amendment is that section one-b, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1b. Exemption from ad valorem property taxation of real property or mobile home occupied as a residence by the owner thereof who is sixty-five years of age or older or permanently and totally disabled.

Notwithstanding any other provision of this Constitution to the contrary, the first ten thousand dollars of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this State and who is sixty-five years of age or older or is permanently and totally disabled as that term may be defined by the Legislature shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law: *Provided*, That the Legislature annually shall appropriate state funds in an amount sufficient to pay to each levying body in this State the amount of tax revenue lost by reason of this amendment to such body during the preceding year: *Provided, however*, That such levying bodies shall be reimbursed by the Legislature only for that portion of the ad valorem taxation exemption above and beyond the exemption for the initial five thousand dollar valuation of real property owned and occupied by a citizen who is sixty-five years of age or older.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Homestead and Taxation Exemption Amendment" and the purpose of the proposed amendment is summarized as follows: "To exempt from ad valorem property taxation the first ten thousand dollars of any real property or mobile home occupied as a residence by the owner who is sixty-five years of age or older or is permanently and totally disabled."



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Regular Session, 1980

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