

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



First Extraordinary Session, 1960

Regular Session, 1961

First Extraordinary Session, 1961

Regular Session, 1962

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FOREWORD

This volume contains the Acts of the First Extraordinary Session of 1960, the Regular Session of 1961, the First Extraordinary Session of 1961 and the Regular Session of 1962, and resolutions of general interest adopted by the Legislature during these sessions.

First Extraordinary Session, 1960

This session was called by the Governor for the purpose of considering and acting upon the following:

"First: Legislation to permit maximum participation by the State of West Virginia and its citizens in the benefits provided under an Act of the Congress entitled 'Social Security Amendments of 1960.' (HR 12580).

"Second: Legislation to provide and appropriate additional revenues: (a) For the purposes specified in Paragraph First above; (b) for the purchase, development, improvement and expansion of state parks, state forests and scenic attractions; the reclamation of strip-mined areas; the improvement of streams; and the development of recreational areas and facilities; and (c) for the expansion of the Department of Public Safety to the maximum strength now provided by law."

The Legislature convened on October 3 and adjourned *sine die* October 5, 1960, after passing two bills. One provided for medical assistance to needy persons receiving public assistance and establishing a program of medical assistance for persons over the age of 65 years; and the other made a supplemental appropriation of funds for a program of medical assistance to the aged.

During the session 15 bills were introduced—8 House Bills and 7 Senate Bills. The two bills passed and approved by the Governor were S. B. Nos. 1 and 6. There were 5 House Concurrent and 6 House Resolutions offered, all of which were adopted. Six Senate Concurrent Resolutions were offered and 5 adopted; and the 5 Senate Resolutions offered were all adopted.

Regular Session, 1961

There was a total of 785 bills introduced in the Senate and House of Delegates during the 1961 Regular Session of the Legislature. Of this total 488 were House Bills and 297 Senate Bills. The Legislature passed 101 House Bills and 75 Senate Bills.

Of the 176 enactments of the session, the Governor approved 169, vetoed three and permitted three to become law without his approval. The Budget Bill does not require executive action. The Acts vetoed were HB 59 (Driver Instruction Permits for Motor Vehicles), SB 62 (Removing Washington Carver Camp as an adjunct of West Virginia State College), and SB 272 (Issuance and Sale of Road Bonds). The three that became law without approval were HB 162 (Unlawful Practice of Optometry), HB 472 (Arranging Counties into Congressional Districts) and SB 121 (Assessment of Property and Levy and Collection of Taxes).

There were 54 House Concurrent, 12 House Joint and 36 House Resolutions offered during the session, of which 30 House Concurrent, three House Joint and 30 House Resolutions were adopted. The Senate had 27 Senate Concurrent, 10 Senate Joint and 15 Senate Resolutions, of which 13 Senate Concurrent, one Senate Joint (SJR 1, Ratifying an Amendment to the Constitution of the United States providing for the appointment of presidential electors for the District of Columbia) and 15 Senate Resolutions were adopted.

Three Amendments to the State Constitution were proposed. The amendments and the Resolutions proposing them are as follows: Executive Department, Article VII of the Constitution (HJR 2), Alcoholic Liquor Control Amendment, §46, Article VI of the Constitution (HJR 4) and Limitation of Taxes on Income Amendment (HJR 7).

There were 115 House Bills, passed by the House, which were not passed by the Senate; and 12 Senate Bills, passed by that body, were not passed by the House.

First Extraordinary Session, 1961

The principal item of business in the Governor's call for this extraordinary session was the enactment of legislation to permit maximum participation by the State in the federal program of aid to dependent children of unemployed parents. However, a total of fourteen items of business were listed in the three separate proclamations convening the session.

The Legislature met on June 14 and adjourned *sine die* June 16, 1961, after passing 13 bills which embodied action upon all the matters set forth in the proclamations.

During the session, 36 bills were introduced—20 House Bills and 16 Senate Bills. There were six House Concurrent Resolutions and five House Resolutions offered, of which five House Concurrent and all House Resolutions were adopted. The Senate had six Senate Concurrent and five Senate Resolutions, of which three Senate Concurrent and all Senate Resolutions were adopted.

Regular Session, 1962

The fourth 30-day session of the Legislature convened January 10 and adjourned *sine die* February 10.

There was a total of 134 bills introduced in the Senate and House of Delegates during the 1962 Regular Session of the Legislature. Of this total 74 were House Bills and 60 Senate Bills. The Legislature passed 16 House Bills and 23 Senate Bills.

The Governor approved all the bills passed, except the Budget Bill, which does not require executive action.

There were 45 House Concurrent, 6 House Joint and 30 House Resolutions offered during the session, of which 20 House Concurrent, 2 House Joint and 29 House Resolutions were adopted. The Senate had 27 Senate Concurrent, 4 Senate Joint and 13 Senate Resolutions, of which 12 Senate Concurrent, 1 Senate Joint and 13 Senate Resolutions were adopted.

Three Constitutional Amendments were proposed. The amendments and the resolutions proposing them are as follows: Sheriffs' Succession Amendment (HJR 3), Fair Representation Amendment (HJR 1) and Legislative Amendment (SJR 3). The Legislature also submitted the State Executive and Budget Amendment, proposed by HJR 2, Regular Session, 1961, to the voters.

There were 12 House Bills, passed by the House, which were not passed by the Senate; and 5 Senate Bills, passed by that body, not passed by the House.

This volume may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston 5, West Virginia.

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

May 15, 1962

ERRATA

Page 332, Chapter 84, Section 15, Line 6, the word "void" should be "valid".

Page 916, HJR 2, Section 5, Line 1 of the last paragraph, a comma should follow the word "provisions".

Page 917, HJR 2, Section 10, last line of section, the word "repeal" should be "repel".

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LEGISLATURE OF WEST VIRGINIA

MEMBERS AND OFFICERS

FIFTY-FIFTH LEGISLATURE

SENATE

OFFICERS

President—Howard W. Carson, Fayetteville

President Pro Tempore—Ward Wylie, Mullens

Clerk—J. Howard Myers, Martinsburg

Sergeant-at-Arms—John E. Howell, Charleston

Doorkeeper—Paul Babich, Beckley

District	Name	Address
First	*Arch W. Riley (D) William Tompos (D)	Wheeling Weirton
Second	Theodore M. Bowers (R) *John E. Carrigan (R)	New Martinsville Moundsville
Third	*Joseph M. Handlan (R) J. C. Powell (R)	Parkersburg St. Marys
Fourth	Jack Johnson (R) *Paul R. Moore (D)	Pt. Pleasant Ravenswood
Fifth	C. H. McKown (D) *Lyle A. Smith (D)	Wayne Huntington
Sixth	Glenn D. Hatcher (D) *Glenn Taylor (D)	War Matewan
Seventh	Daniel D. Dahill (D) *Lloyd G. Jackson (D)	Logan Hamlin
Eighth	*J. Hornor Davis, II (D) Paul J. Kaufman (D)	Charleston Charleston
Ninth	†George C. Porter (D) Ward Wylie (D)	Beckley Mullens
Tenth	R. E. Barnett (D) *O. Roy Parker (D)	Bluefield Union
Eleventh	Howard W. Carson (D) *W. N. Jasper, Jr. (D)	Fayetteville Lewisburg
Twelfth	*Carl E. Gainer (D) E. Hans McCourt (D)	Richwood Webster Springs
Thirteenth	*Walter A. Holden (D) William R. Sharpe, Jr. (D)	Clarksburg Weston
Fourteenth	O. G. Hedrick (D) *William A. Moreland (D)	Fairmont Morgantown
Fifteenth	*Dayton R. Stemple (R) Dallas Wolfe (R)	Philippi Rowlesburg
Sixteenth	*Clarence E. Martin, Jr. (D) Charles A. Millar (D)	Martinsburg Keyser

(D) Democrats 25

(R) Republicans 7

Total 32

*Senators elected in 1958, all others elected in 1960.
†Appointed June 14, 1961, to fill the vacancy caused by the resignation of Jack A. Nuckols.

HOUSE OF DELEGATES

OFFICERS

Speaker—Julius W. Singleton, Jr., Morgantown

Clerk—C. A. Blankenship, Pineville

Sergeant-at-Arms—Don Yoak, Spencer

Doorkeeper—D. Earl Brawley, Charleston

County	Name	Address
Barbour	Kenneth Auvil (D)	Belington
Berkeley	Cecil S. Noll (D)	Martinsburg
Boone	Dennie Lee Hill (D)	Madison
Braxton	Paul S. Moyers (D)	Burnsville
Brooke	Mino R. D'Aurora (D)	Follansbee
Cabell	Tennyson J. Bias (D)	Huntington
	Mike Casey (D)	Huntington
	T. E. Holderby (R)	Huntington
	Hugh A. Kincaid (D)	Huntington
	J. Bernard Poindexter (D)	Huntington
Calhoun	James E. Morford (D)	Grantsville
Clay	J. C. Cruikshank (D)	Ivydale
Doddridge	Paul B. Davis (R)	Smithburg
Fayette	T. E. Myles (D)	Fayetteville
	Roy Swanigan (D)	Fayetteville
	Earl M. Vickers (D)	Montgomery
	Mrs. Nell W. Walker (D)	Winona
Gilmer	Maurice Boggs (D)	Sand Fork
Grant	Larkin B. Ours (R)	Dorcas
Greenbrier	Walter Roy Blankenship (D)	Frankford
	Richard E. Ford (D)	Lewisburg
Hampshire	William B. Slonaker (D)	Capon Bridge
Hancock	Callie Tsapis (D)	Weirton
Hardy	James M. Miley (D)	Moorefield
Harrison	Carmine J. Cann (D)	Clarksburg
	Wade H. Garrett (D)	Salem
	H. Laban White, Jr. (D)	Clarksburg
	Rene V. Zabeau (D)	Clarksburg
Jackson	B. Noel Poling (R)	Ripley
Jefferson	Kenneth W. Metz (D)	Charles Town
Kanawha	John A. Amick (D)	Charleston
	Jesse S. Barker (D)	Charleston
	J. F. Bedell, Jr. (D)	Charleston
	Thomas L. Black (D)	East Bank
	Pat Board, Jr. (D)	Charleston
	Ivor F. Boiarsky (D)	Charleston
	W. T. Brotherton, Jr. (D)	Charleston
	Kelly L. Castleberry (D)	South Charleston
	James Horner Davis, III (D)	Charleston
	Edward D. Knight, Jr. (D)	Charleston
Lewis	Charles G. Peters, Jr. (D)	Charleston
	John L. Bailey (D)	Weston
Lincoln	A. J. Belcher (D)	Hamlin
Logan	Luther H. Ghiz (D)	Logan
	Charlie Gore, Jr. (D)	Chapmanville
	Earl B. Hager (D)	Logan
	Thomas W. Mathis (D)	Logan
Marion	Robert H. Tennant (D)	Fairmont
	J. E. Watson (D)	Fairmont
	W. R. Wilson (D)	Fairmont

County	Name	Address
Marshall	Robert F. McCarthy (D) ¹ Mrs. Pearle Yoho (D)	Glendale Moundsville
Mason	Carroll W. Casto (R)	Pt. Pleasant
McDowell	Jack L. Christian (D) Fred E. Counts (D) Mrs. Elizabeth Drewry (D) Richard R. Parsons (D) Fred G. Wooten (D)	Welch Bartley Northfork Welch Coalwood
Mercer	Clarence C. Christian, Jr. (D) Charles E. Lohr (D) Dan Wells (D)	Princeton Princeton Bluefield
Mineral	Paul F. Giffin (R)	Keyser
Mingo	Noah E. Floyd (D) Cecil Mitchell (D)	Williamson Newtown
Monongalia	Charles W. Lloyd (D) Julius W. Singleton, Jr. (D) ² Doyle S. Woodford (D)	Morgantown Morgantown Morgantown
Monroe	T. G. Matney (D)	Peterstown, RFD
Morgan	A. Foster Lineweaver (R)	Berkeley Springs
Nicholas	D. R. Frazer (D)	Richwood
Ohio	Harry L. Buch (R) Chester R. Hubbard (R) George H. Seibert, Jr. (R)	Wheeling Wheeling Wheeling
Pendleton	William McCoy, Jr. (D)	Franklin
Pleasants	Clarence E. Creek (D)	St. Marys
Pocahontas	Thomas C. Edgar (D)	Hillsboro
Preston	Chester Liller (R)	Kingwood
Putnam	Earl Keith Kelley (D)	Red House, RFD 1
Raleigh	³ A. David Abrams (D) ⁴ D. W. Kinzer (D) C. Berkley Lilly (D) Mrs. W. W. Withrow (D)	Beckley Beckley Beckley Beckley
Randolph	Jack R. Nuzum (D)	Elkins
Ritchie	J. F. Deem (R)	Harrisville
Roane	Gene M. Ashley (R)	Amma
Sunners	Ray Haythe (D)	Hinton
Taylor	Ted H. Rollins (D)	Grafton, Rt. 5
Tucker	Joseph R. Gilmore (D)	Parsons
Tyler	Curtis M. Keys (R)	Alma
Upshur	David Lee Sheppard (R)	Buckhannon
Wayne	Lewis Glenn Mills (D) Y. J. Rife (D)	Wayne Kenova
Webster	D. P. Given (D)	Webster Springs
Wetzel	Herbert Schupach (D)	New Martinsville
Wirt	Ray R. Palmer (D)	Sandyville, RFD
Wood	Spencer K. Creel (R) Robert T. Goldenberg (R) Jack L. Miller (R)	Parkersburg, RFD 5 Parkersburg Parkersburg
Wyoming	J. Paul England (D) Marshall G. West (D)	Pineville Oceana

(D) Democrats—82. (R) Republicans—18. Total 100

¹ Appointed September 14, 1961, to fill vacancy caused by the resignation of Edward C. Pastilong.² Appointed December 12, 1961, to fill vacancy caused by the resignation of David L. Solomon.³ Appointed June 14, 1961, to fill vacancy caused by the resignation of George C. Porter.⁴ Appointed June 14, 1961, to fill vacancy caused by the resignation of Roy Lee Harmon.

STANDING COMMITTEES OF THE SENATE

Regular Session, 1962

AERONAUTICS

Messrs. Hedrick (*Chairman*), Sharpe (*Vice Chairman*), Barnett, Hatcher, Millar, Carrigan and Johnson.

AGRICULTURE

Messrs. Parker (*Chairman*), Millar (*Vice Chairman*), Hedrick, McCourt, McKown, Taylor, Wylie, Johnson and Wolfe.

BANKS AND CORPORATIONS

Messrs. Davis (*Chairman*), Smith (*Vice Chairman*), Jasper, Millar, Moreland, Porter, Carrigan, Handlan and Johnson.

CLAIMS AND GRIEVANCES

Messrs. Martin (*Chairman*), Porter (*Vice Chairman*), Davis, Hedrick, Kaufman, Taylor, Handlan, Johnson and Stemple.

COUNTIES AND MUNICIPAL CORPORATIONS

Messrs. Jasper (*Chairman*), Gainer (*Vice Chairman*), Davis, Hedrick, Porter, Sharpe, Taylor, Handlan and Stemple.

EDUCATION

Messrs. McKown (*Chairman*), Holden (*Vice Chairman*), Hatcher, Jasper, Kaufman, McCourt, Moore, Parker, Porter, Riley, Taylor, Bowers, Carrigan, Johnson and Wolfe.

EXAMINE CLERK'S OFFICE

Messrs. Hatcher (*Chairman*), Davis and Stemple.

FEDERAL RELATIONS

Messrs. Millar (*Chairman*), Kaufman (*Vice Chairman*), Gainer, Moore, Sharpe, Tompos, Bowers, Carrigan and Johnson.

FINANCE

Messrs. McCourt (*Chairman*), Smith (*Vice Chairman*), Barnett, Holden, Jackson, Jasper, Kaufman, Martin, McKown, Millar, Moore, Moreland, Sharpe, Taylor, Wylie, Bowers, Powell and Wolfe.

FORESTRY AND CONSERVATION

Messrs. Gainer (*Chairman*), Hatcher (*Vice Chairman*), Barnett, Davis, Hedrick, Jackson, Jasper, McCourt, McKown, Millar, Wylie, Bowers, Handlan, Powell and Stemple.

FORFEITED, DELINQUENT AND UNAPPROPRIATED LANDS

Messrs. Moreland (*Chairman*), Kaufman (*Vice Chairman*), Davis, Martin, McKown, Handlan and Powell.

INSURANCE

Messrs. Moreland (*Chairman*), Barnett (*Vice Chairman*), Gainer, Jasper, Martin, Smith, Bowers and Powell.

INTERSTATE COOPERATION

Messrs. Jackson (*Chairman*), Smith (*Vice Chairman*), McKown, Bowers and Stemple.

THE JUDICIARY

Messrs. Riley (*Chairman*), Barnett, Gainer, Hatcher, Hedrick, Holden, Jackson, Kaufman, McKown, Moore, Moreland, Parker, Porter, Tompos, Carrigan, Handlan, Johnson and Stemple.

LABOR

Messrs. Hedrick (*Chairman*), Tompos (*Vice Chairman*), Barnett, Davis, Holden, Millar, Porter, Johnson and Wolfe.

MEDICINE AND SANITATION

Messrs. Wylie (*Chairman*), Moreland (*Vice Chairman*), Barnett, Hedrick, Holden, Smith, Tompos, Powell and Stemple.

MILITIA

Messrs. Sharpe (*Chairman*), Barnett, Gainer, Hedrick, Moreland, Smith, Handlan, Powell and Wolfe.

MINES AND MINING

Messrs. Jackson (*Chairman*), Hatcher (*Vice Chairman*), Barnett, Gainer, Jasper, Kaufman, Wylie, Powell and Stemple.

PENITENTIARY

Messrs. Holden (*Chairman*), Hatcher, Hedrick, McCourt, Parker, Taylor, Wylie, Bowers and Johnson.

PRIVILEGES AND ELECTIONS

Messrs. Gainer (*Chairman*), Kaufman, Moore, Parker, Riley, Sharpe, Powell, Stemple and Wolfe.

PUBLIC BUILDINGS AND HUMANE INSTITUTIONS

Messrs. Moore (*Chairman*), Sharpe (*Vice Chairman*), Gainer, Hedrick, Jackson, Kaufman, McKown, Millar, Parker, Taylor, Tompos, Wylie, Handlan, Johnson and Stemple.

PUBLIC LIBRARY

Messrs. Kaufman (*Chairman*), Hatcher, Holden, Porter, Riley, Smith, Bowers, Powell and Wolfe.

SENATE COMMITTEES

PUBLIC PRINTING

Messrs. Barnett (*Chairman*), Davis, Hatcher, Martin, McKown, Tompos, Wylie, Bowers and Carrigan.

RAILROADS

Messrs. Taylor (*Chairman*), Millar (*Vice Chairman*), Davis, Jasper, McKown, Porter, Smith, Johnson and Stemple.

REDISTRICTING

Messrs. Jasper (*Chairman*), Gainer (*Vice Chairman*), Barnett, Holden, Martin, Moore, Wylie, Carrigan and Wolfe.

ROADS AND NAVIGATION

Messrs. Smith (*Chairman*), Jasper (*Vice Chairman*), Gainer, Hatcher, Jackson, Martin, Millar, Moore, Moreland, Parker, Porter, Sharpe, Tompos, Bowers, Carrigan, Handlan and Wolfe.

RULES

Messrs. Carson (*Chairman ex officio*), Martin, McCourt, Moreland, Riley, Smith, Wylie, Carrigan and Stemple.

TEMPERANCE

Messrs. Parker (*Chairman*), Jackson (*Vice Chairman*), Davis, Holden, Sharpe, Smith, Tompos, Powell and Stemple.

VETERANS' AFFAIRS

Messrs. Tompos (*Chairman*), Sharpe (*Vice Chairman*), Gainer, Hedrick, Jackson, Millar, Porter, Carrigan and Johnson.

JOINT COMMITTEE ON ENROLLED BILLS
ON THE PART OF THE SENATE

Messrs. Davis (*Chairman*), Hatcher, Millar, Handlan and Wolfe.

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
ON THE PART OF THE SENATE

Messrs. Carson (*Chairman ex officio*), McCourt, Moreland, Carrigan and Handlan.

JOINT COMMITTEE ON JOINT RULES
ON THE PART OF THE SENATE

Messrs. Carson (*Chairman ex officio*), Moreland and Carrigan.

STANDING COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1962

AGRICULTURE

Messrs. Slonaker (*Chairman*), Palmer (*Vice Chairman*), Blankenship, Boggs, Creek, Edgar, Ford, Frazer, Gilmore, Haythe, Kelley, Knight, Matney, McCoy, Metz, Miley, Moyers, Peters, Rife, Rollins, Mrs. Yoho, Messrs. Ashley, Giffin, Lineweaver and Ours.

BANKING

Mrs. Walker (*Chairman*), Messrs. Garrett (*Vice Chairman*), Amick, Belcher, Black, Boiarsky, Cann, D'Aurora, Ford, Gore, Hill, Lilly, Lloyd, Lohr, Metz, Myles, Peters, Swanigan, Watson, Woodford, Mrs. Yoho, Messrs. Casto, Davis (of Doddridge), Goldenberg and Keys.

CLAIMS

Messrs. Knight (*Chairman*), Nuzum (*Vice Chairman*), Amick, England, Ghiz, Hager, Haythe, Kincaid, Mathis, McCarthy, Moyers, Myles, Nuzum, Palmer, Parsons, Peters, Rollins, Schupbach, Swanigan, Watson, Wells, Woodford, Casto, Giffin, Lineweaver and Miller.

COUNTIES, DISTRICTS AND MUNICIPALITIES

Miss Tsapis (*Chairman*), Messrs. Amick (*Vice Chairman*), Abrams, Bailey, Bias, Black, Brotherton, Christian (of Mercer), Creek, Cruikshank, Mrs. Drewry, Messrs. Floyd, Ford, Kelley, Kincaid, Lilly, Mathis, McCarthy, Mitchell, Morford, Woodford, Casto, Goldenberg, Holderby and Hubbard.

DELINQUENT LANDS

Messrs. West (*Chairman*), Given (*Vice Chairman*), Auvil, Barker, Bedell, Boiarsky, Brotherton, Castleberry, Davis (of Kanawha), Garrett, Hager, McCarthy, Miley, Nuzum, Parsons, Peters, Poindexter, Swanigan, Vickers, White, Wooten, Ashley, Buch, Goldenberg and Miller.

EDUCATION

Messrs. Floyd (*Chairman*), Rife (*Vice Chairman*), Amick, Auvil, Bailey, Bias, Christian (of Mercer), Mrs. Drewry,

Messrs. England, Frazer, Gore, Hager, Kelley, Lloyd, Metz, Mills, Palmer, Schupbach, Slonaker, Mrs. Walker, Messrs. Wilson, Casto, Davis (of Doddridge), Keys and Liller.

ELECTIONS

Messrs. Kincaid (*Chairman*), Counts (*Vice Chairman*), Auvil, Bailey, Boggs, Boiarsky, Brotherton, Castleberry, Christian (of McDowell), England, Floyd, Garrett, Ghiz, Kinzer, Lilly, Mathis, Metz, Mills, Palmer, Parsons, West, Mrs. Yoho, Messrs. Holderby, Liller, Miller and Poling.

FINANCE

Messrs. Boiarsky (*Chairman*), Hill (*Vice Chairman*), Bedell, Bias, Black, Cann, Castleberry, Christian (of McDowell), D'Aurora, Frazer, Ghiz, Hager, Kincaid, Lohr, McCarthy, McCoy, Metz, Schupbach, Vickers, Mrs. Withrow, Messrs. Zabeau, Davis (of Doddridge), Deem, Keys and Ours.

FORESTRY AND CONSERVATION

Messrs. McCoy (*Chairman*), Belcher (*Vice Chairman*), Auvil, Barker, Blankenship, Boggs, Casey, Christian (of Mercer), Counts, Edgar, Hill, Kinzer, Knight, Lohr, Matney, Miley, Mitchell, Nuzum, Slonaker, Tennant, Wells, Deem, Goldenberg, Liller and Sheppard.

GAME AND FISH

Messrs. Gilmore (*Chairman*), Cruikshank (*Vice Chairman*), Amick, Bailey, Blankenship, Boggs, Edgar, Ford, Frazer, Knight, Lohr, Matney, McCoy, Miley, Mills, Morford, Noll, Slonaker, Tennant, Watson, Wooten, Creel, Deem, Giffin and Ours.

HEALTH

Mrs. Drewry (*Chairman*), Messrs. Casey (*Vice Chairman*), Abrams, Auvil, Black, Blankenship, Castleberry, Davis (of Kanawha), England, Floyd, Gilmore, Hager, Kincaid, Lohr, Matney, Mills, Parsons, Poindexter, Tennant, Miss Tsapis, Mrs. Walker, Mrs. Withrow, Messrs. Giffin, Hubbard, Keys and Line-weaver.

HUMANE INSTITUTIONS

Messrs. Creek (*Chairman*), Bailey (*Vice Chairman*), Bedell, Board, Castleberry, D'Aurora, Mrs. Drewry, Messrs. Floyd, Ghiz, Haythe, Kincaid, Mills, Mitchell, Moyers, Nuzum, Parsons, Poindexter, Wilson, Mrs. Withrow, Mrs. Yoho, Messrs. Giffin, Hubbard, Keys and Miller.

INSURANCE

Messrs. Board (*Chairman*), Hill (*Vice Chairman*), Belcher, Castleberry, Christian (of McDowell), Creek, England, Frazer, Garrett, Gore, Lilly, Moyers, Myles, Nuzum, Peters, Poin-dexter, Rife, Rollins, Schupbach, Wells, Woodford, Ashley, Davis (of Doddridge), Keys and Sheppard.

INTERSTATE COOPERATION

Messrs. Hager (*Chairman*), Frazer, McCoy, Ours and Seibert.

JUDICIARY

Messrs. White (*Chairman*), Wells (*Vice Chairman*), Abrams, Barker, Brotherton, Casey, Cruikshank, Davis (of Kanawha), Ford, Gilmore, Knight, Lilly, Moyers, Myles, Nuzum, Parsons, Peters, Rife, Miss Tsapis, Mrs. Walker, Messrs. West, Buch, Casto, Hubbard and Miller.

LABOR AND INDUSTRY

Messrs. Zabeau (*Chairman*), D'Aurora (*Vice Chairman*), Barker, Bedell, Bias, Blankenship, Board, Boggs, Cann, Casey, Mrs. Drewry, Messrs. Given, Kinzer, Lloyd, McCarthy, Rollins, Swanigan, Mrs. Walker, Messrs. West, Wooten, Mrs. Yoho, Messrs. Ashley, Creel, Poling and Sheppard.

MILITARY AFFAIRS

Messrs. Garrett (*Chairman*), Bailey (*Vice Chairman*), Board, Boiarsky, Christian (of McDowell), D'Aurora, Davis, (of Kanawha), Edgar, Gore, Kinzer, Lohr, Metz, Morford, Rife, Slonaker, Tennant, Vickers, West, White, Woodford, Zabeau, Creel, Goldenberg, Lineweaver and Miller.

MINING

Messrs. Mitchell (*Chairman*), Swanigan (*Vice Chairman*), Abrams, Barker, Belcher, Black, Cann, Christian (of Mercer), Counts, Mrs. Drewry, Messrs. Given, Gore, Hill, Kinzer, Lloyd, Tennant, Vickers, West, Mrs. Withrow, Messrs. Wooten, Zabeau, Creel, Deem, Miller and Sheppard.

PENAL AND CORRECTIONAL INSTITUTIONS

Messrs. Schupbach (*Chairman*), Noll (*Vice Chairman*), Auvil, Barker, Bias, Cann, Casey, Christian (of Mercer), Cruikshank, Edgar, Ghiz, Gilmore, Given, Gore, Kelley, Mathis, Miley, Mitchell, Morford, Rollins, Miss Tsapis, Messrs. Ashley, Liller, Poling and Sheppard.

RAILROADS

Messrs. Christian (of Mercer) (*Chairman*), Watson (*Vice*

Chairman), Bedell, Belcher, Black, Board, Boggs, Cruikshank, Davis (of Kanawha), Floyd, Given, Haythe, Matney, Mills, Noll, Poindexter, Rollins, White, Wilson, Mrs. Yoho, Messrs. Zabeau, Creel, Hubbard, Ours and Seibert.

REDISTRICTING

Messrs. Frazer (*Chairman*), Myles (*Vice Chairman*), Amick, Brotherton, Counts, Creek, Gilmore, Given, Kelley, Lilly, McCoy, Morford, Nuzum, Poindexter, Miss Tsapis, Messrs. Vickers, Watson, Wells, White, Wilson, Woodford, Goldenberg, Hubbard, Poling and Seibert.

ROADS

Messrs. Morford (*Chairman*), Lloyd (*Vice Chairman*), Bedell, Christian (of McDowell), Counts, Creek, Davis (of Kanawha), Ford, Ghiz, Haythe, Kelley, Kinzer, Mathis, Mitchell, Moyers, Noll, Palmer, Slonaker, Wells, Mrs. Withrow, Messrs. Wooten, Casto, Davis (of Doddridge), Deem and Poling.

RULES

Messrs. Singleton (*Chairman ex officio*), Brotherton, Boiarsky, Floyd, Myles, Poindexter, Watson, Wells, White, Zabeau, Ours and Seibert.

TEMPERANCE

Messrs. McCarthy (*Chairman*), Matney (*Vice Chairman*), Abrams, Bailey, Board, Boiarsky, Cann, Casey, Cruikshank, D'Aurora, Given, Hager, Hill, Knight, Lloyd, McCoy, Myles, Tennant, Miss Tsapis, Messrs. Watson, Zabeau, Ashley, Buch, Holderby and Hubbard.

VETERANS AFFAIRS

Messrs. Rife (*Chairman*), Bias (*Vice Chairman*), Abrams, Belcher, Blankenship, Brotherton, Christian (of McDowell), Edgar, Garrett, Haythe, Mathis, Miley, Mills, Noll, Palmer, Schupbach, Swanigan, Vickers, Wilson, Wooten, Ashley, Buch, Giffin and Sheppard.

JOINT COMMITTEE ON ENROLLED BILLS ON THE PART OF THE HOUSE

Mrs. Withrow (*Chairman*), Messrs. Counts (*Vice Chairman*), Vickers, Goldenberg and Lineweaver.

JOINT COMMITTEE ON GOVERNMENT AND FINANCE ON THE PART OF THE HOUSE

Messrs. Singleton (*Chairman ex officio*), Cruikshank, Schupbach, Deem and Hubbard.

JOINT COMMITTEE ON JOINT RULES ON THE PART OF THE HOUSE

Messrs. Singleton (*Chairman ex officio*), Brotherton and Seibert.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1961

REGULAR SESSION

CHAPTER 1

(Com. Sub. for Senate Bill No. 188—Originating in the
Senate Committee on the Judiciary)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to the tolling of statutes of limitation with respect to certain actions and claims.

Article 2. Limitation of Actions and Suits.

Section

21. When running of statutes of limitation shall be tolled as to certain actions and claims.
-

Be it enacted by the Legislature of West Virginia:

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

- Section 21. *When Running of Statutes of Limitation Shall Be Tolled as to Certain Actions and Claims.*—After
a civil action is commenced or a claim is asserted therein,
the running of any statute of limitation shall be tolled as

5 to any claim which the party against whom a claim has
6 been asserted may assert, or be permitted by the court to
7 assert, in the action against another person who is, or may
8 be, liable to him for all or any part of the claim which was
9 originally asserted against the party in the action. The
10 running of any statute of limitation on any such claim
11 shall be tolled so long as the claim originally asserted
12 remains pending in the action.

CHAPTER 2

(House Bill No. 78—By Mr. Myles and Mr. Seibert)

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recovering damages in wrongful death actions.

Article 7. Actions for Injuries.

Section

6. Party plaintiff in such action; damages; distribution; limitation.

Be it enacted by the Legislature of West Virginia:

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

Section 6. *Party Plaintiff in Such Action; Damages; Distribution; Limitation.*—Every such action shall be brought by and in the name of the personal representative of such deceased person, and the amount recovered in every such action shall be distributed to the parties and in the proportion provided by law in relation to the distribution of personal estate, left by persons dying intestate. In every such action the jury may give such

9 damages as they shall deem fair and just, not exceeding
10 ten thousand dollars: *Provided, however,* That if the plain-
11 tiff in such action shall prove by a preponderance of the
12 evidence financial or pecuniary loss sustained by a distri-
13 butee or distributees of such deceased person, the jury
14 may give such further damages as shall equal such finan-
15 cial or pecuniary loss to such distributee or distributees,
16 not exceeding the sum of twenty-five thousand dollars
17 as the total of all damages recoverable in such action,
18 and the amount so recovered shall not be subject to any
19 debts or liabilities of the deceased.

20 Items of pecuniary loss or expenses recoverable under
21 general law by the personal representative of the de-
22 ceased for the benefit of the estate of the deceased, in-
23 cluding but not limited to loss or expense caused by dam-
24 age to property of the deceased, reasonable and necessary
25 expense incurred in medical or surgical treatment, hos-
26 pitalization, and burial of deceased shall not be admissible
27 in evidence or considered by the jury in such action. Noth-
28 ing herein contained shall bar the recovery of such items
29 of loss or expense in an action proper for such purpose.

30 In every case in which the jury shall give damages for
31 financial or pecuniary loss in such action, the jury shall
32 state in their verdict the part thereof given for such
33 financial or pecuniary loss.

34 Every such action shall be commenced within two years
35 after the death of such deceased person.

36 The provisions of this section shall not apply to actions
37 brought for the death of any person occurring prior to
38 the effective date hereof.

CHAPTER 3

(Com. Sub. for House Bill No. 44—Originating in the
House Committee on the Judiciary)

[Passed March 9, 1961: in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section thirty-one, article three,
chapter fifty-six of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to actions by or against nonresident operators of motor vehicles involved in highway accidents.

Article 3. Writs, Process and Order of Publication.

Section

31. Actions by or against nonresident operators of motor vehicles involved in highway accidents.

Be it enacted by the Legislature of West Virginia:

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

Section 31. *Actions by or against Nonresident Operators of Motor Vehicles Involved in Highway Accidents.*—The operation by a nonresident, or by his duly authorized agent, of a motor vehicle upon a public street, road or highway of this state, shall be deemed equivalent to an appointment by such nonresident of the state auditor, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him, in any court of record in this state, including action or proceeding brought by nonresident plaintiff or plaintiffs, growing out of any accident or collision in which such nonresident may be involved while so operating or so permitting to be operated a motor vehicle on any such street, road or highway, and such operation shall be a signification of his agreement that any such process against him, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident were personally served with a summons and complaint within this state.

(a) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action that he will reimburse the defendant, or cause him to be reimbursed, the necessary expense incurred by him in and about the defense

29 of the action in this state, and upon the issue of a sum-
30 mons the clerk will certify thereon that said bond has
31 been given and approved. Service shall be made by leav-
32 ing the original and two copies of both the summons and
33 complaint with the certificate aforesaid of the clerk
34 thereon, and a fee of two dollars with said auditor, or
35 in his office, and said service shall be sufficient upon said
36 nonresident: *Provided*, That notice of such service and
37 a copy of the summons and complaint shall forthwith be
38 sent by registered mail, return receipt requested, by said
39 auditor to the defendant, and the defendant's return re-
40 ceipt signed by himself or his duly authorized agent or
41 the registered mail so sent by said auditor is refused
42 by the addressee and the registered mail is returned to
43 said auditor, or to his office, showing thereon the stamp
44 of the postoffice department that delivery has been re-
45 fused, is appended to the original summons and complaint,
46 and filed therewith in the clerk's office of the court from
47 which process issued. The court may order such contin-
48 uances as may be reasonable to afford the defendant op-
49 portunity to defend the action.

50 (b) The fee of two dollars, remitted to the said auditor
51 at the time of service, shall be taxed in the costs of the
52 proceeding and said auditor shall pay into the state
53 treasury all funds so coming into his hands from such
54 services. The auditor shall keep a record in his office of
55 all such process and the day and hour of service thereof.

56 (c) The following words and phrases, when used in this
57 article, shall, for the purpose of this article and unless
58 a different intent on the part of the Legislature be ap-
59 parent from the context, have the following meanings:

60 (1) "Duly authorized agent" shall mean and include
61 among others a person who operates a motor vehicle in
62 this state for a nonresident as defined in this section and
63 chapter, in pursuit of business, pleasure, or otherwise,
64 or who comes into this state and operates a motor ve-
65 hicle therein for, or with the knowledge or acquiescence
66 of, such nonresident; and shall include among others a
67 member of the family of such nonresident or a person
68 who, at the residence, place of business or post office of
69 such nonresident, usually receives and receipts for mail
70 addressed to such nonresident.

71 (2) "Motor vehicle" shall mean and include any self-
72 propelled vehicle, including motorcycle, tractor, and
73 trailer, not operated exclusively upon stationary tracks.

74 (3) "Nonresident" shall mean any person who is not
75 a resident of this state or resident who has moved from
76 the state subsequent to said accident or collision, and
77 among others includes a nonresident firm, partnership,
78 corporation or voluntary association, or a firm, part-
79 nership, corporation or voluntary association that has
80 moved from the state subsequent to said accident or
81 collision.

82 (4) "Nonresident plaintiff or plaintiffs" shall mean a
83 nonresident of this state who institutes an action in a
84 court in this state having jurisdiction against a nonresi-
85 dent of this state in pursuance of the provisions of this
86 article.

87 (5) "Street," "road" or "highway" shall mean the en-
88 tire width between property lines of every way or place
89 of whatever nature when any part thereof is open to the
90 use of the public, as a matter of right, for purposes of
91 vehicular traffic.

92 (d) The provision for service of process herein is cumu-
93 lative and nothing herein contained shall be construed
94 as a bar to the plaintiff in any action from having process
95 in such action served in any other mode and manner pro-
96 vided by law.

97 (e) This section shall not be retroactive and the pro-
98 visions thereof shall not be available to a plaintiff in a
99 cause of action arising or an accident occurring prior to
100 the date this section takes effect.

CHAPTER 4

(Com. Sub. for Senate Bill No. 186—Originating in the
Senate Committee on the Judiciary)

[Passed March 10, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section two, article two, chapter
fifty-nine of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to security by nonresidents for costs.

Article 2. Costs Generally.

Section

2. Security by nonresidents for costs.

Be it enacted by the Legislature of West Virginia:

That section two, article two, 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:

Section 2. *Security by Nonresidents for Costs.*—In any
2 action (except where such poor person is plaintiff) there
3 may be a suggestion filed with the court or the clerk
4 thereof, by a defendant or any other officer of the court,
5 that the plaintiff is not a resident of this state, and that
6 security is required of him. After such suggestion is filed,
7 all proceedings in the action shall be suspended until the
8 security, hereinafter provided, has been given. The party
9 giving the security shall serve written notice thereof on
10 all other parties to the action, in the manner provided by
11 the West Virginia rules of civil procedure for trial courts
12 of record, and the action shall, from the date of service
13 or the date of acceptance of service of such notice, pro-
14 ceed in accordance with such rules: *Provided, however,*
15 That any time periods therein shall be tolled from the
16 date the suggestion was filed until the date the notice of
17 security is served or accepted. After sixty days from such
18 suggestion, unless the time for filing such security be
19 extended by the court for good cause shown, the action
20 shall by order of the court be dismissed, unless before the
21 dismissal the plaintiff be proved to be a resident of the
22 state, or security be given before such court, or the clerk
23 thereof, for payment of the costs which may be awarded
24 to the defendant, in the trial court and in all appellate
25 courts, and of the fees due, or to become due, in such ac-
26 tion, to the officers of any such court or courts. The se-
27 curity shall be by cash or bond payable to the state; and
28 if by bond there need be only one obligor therein, if he be

29 sufficient, but, unless the obligor be a surety corporation
30 or bonding corporation which has complied with the laws
31 of this state for the purpose of doing business therein, at
32 least one of the obligors shall be a resident of this state.
33 The court before whose clerk such bond is given may, on
34 motion by a defendant or any other officer thereof, give
35 judgment for so much as he is entitled to by virtue of
36 such bond.

CHAPTER 5

(Com. Sub. for House Bill No. 271—Originating in the
House Committee on Agriculture)

[Passed March 4, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section three, article eleven,
chapter nineteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to
standards for milk and milk products.

Article 11. Milk and Milk Products.

Section

3. Standards.

Be it enacted by the Legislature of West Virginia:

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

Section 3. *Standards.*—It shall be unlawful for any
2 person to manufacture, offer or expose for sale or ex-
3 change, or have in his possession with intent to sell, offer
4 or expose for sale or exchange, any milk or milk products
5 that do not conform to rules and regulations promulgated
6 by the public health council and to the following stand-
7 ards or definitions: •

8 (a) Milk is hereby defined to be the lacteal secretion,
9 practically free from colostrum, obtained by the complete
10 milking of one or more healthy cows, which contains not
11 less than eight and one-half per cent solids not fat and
12 not less than three and one-half per cent milk fat: *Pro-*
13 *vided, however,* That the standard set out in this sub-
14 section shall not be construed to include persons pro-
15 ducing milk and selling the same on a wholesale basis
16 to dairies or receiving plants;

17 (b) The terms "pasteurization" and "pasteurized", and
18 similar terms shall be taken to refer to the process of
19 heating every particle of milk or milk products to at
20 least one hundred forty-five degrees Fahrenheit, and hold-
21 ing it at such temperature continuously for at least thirty
22 minutes, or to at least one hundred sixty-one degrees
23 fahrenheit, and holding it at such temperature continu-
24 ously for at least fifteen seconds, in approved and properly
25 operated equipment: *Provided,* That nothing contained
26 in this definition shall be construed as barring any other
27 process which has been demonstrated to be equally effi-
28 cient and which is approved by the commissioner of agri-
29 culture and state director of health;

30 (c) Skimmed milk is milk from which a sufficient por-
31 tion of milk fat has been removed to reduce its milk fat
32 content to less than three and one-half per cent, and shall
33 contain not less than nine per cent milk solids not fat;

34 (d) Buttermilk is a fluid product resulting from the
35 churning of milk or cream. It contains not less than eight
36 per cent milk solids not fat;

37 (d-1) Cultured buttermilk is a fluid product resulting
38 from the souring or treatment by a lactic acid or other
39 culture of pasteurized skimmed milk or pasteurized re-
40 constituted skimmed milk. It contains not less than eight
41 per cent milk solids not fat;

42 (e) Condensed milk, evaporated milk, concentrated
43 milk, is the product resulting from the evaporation of a
44 considerable portion of the water from milk, and contains,
45 all tolerances being allowed for, not less than twenty-five
46 and five-tenths per cent total solids and not less than
47 seven and eight-tenths per cent milk fat;

48 (f) Sweetened condensed milk, sweetened evaporated

49 milk, sweetened concentrated milk, is the product result-
50 ing from the evaporation of a considerable portion of the
51 water from milk, to which sugar has been added. It con-
52 tains, all tolerances being allowed for, not less than twen-
53 ty-eight per cent total milk solids and not less than seven
54 and eight-tenths per cent milk fat;

55 (g) Condensed skimmed milk, evaporated skimmed
56 milk, concentrated skimmed milk, is the product resulting
57 from the evaporation of a considerable portion of the
58 water from skimmed milk, and contains, all tolerances
59 being allowed for, not less than twenty per cent milk
60 solids;

61 (h) Sweetened condensed skimmed milk, sweetened
62 evaporated skimmed milk, sweetened concentrated skim-
63 med milk, is the product resulting from the evaporation of
64 a considerable portion of the water from skimmed milk
65 to which sugar has been added. It contains, all tolerances
66 being allowed for, not less than twenty-eight per cent
67 milk solids;

68 (i) Dried milk is the product resulting from the re-
69 moval of water from milk, and contains, all tolerances
70 being allowed for, not less than twenty-six per cent milk
71 fat, and not more than five per cent moisture;

72 (j) Dried skimmed milk is the product resulting from
73 the removal of water from skimmed milk, and contains,
74 all tolerances being allowed for, not more than five per
75 cent moisture;

76 (k) Sweet cream is a fresh, clean portion of milk
77 which contains not less than eighteen per cent milk fat.
78 Whipping cream is cream which shall contain not less
79 than thirty percent milk fat. Cream for buttermaking
80 shall be clean and contain no foreign matter and shall
81 be free from filth, putrefaction, mold or decomposition;

82 (l) Butter is the clean, nonrancid product made by
83 gathering in any manner the fat of fresh or ripened milk
84 or cream into a mass, which also contains a small portion
85 of the other milk constituents, with or without salt, and
86 contains not less than eighty per cent milk fat. The
87 addition of vegetable butter coloring is permitted;

88 (m) Cheese is the sound solid, and ripened product
89 made from milk or cream by coagulating the casein

90 thereof with rennett or lactic acid, with or without the
91 addition of ripening ferments and seasoning and contains,
92 in the water-free substance, not less than fifty per cent
93 milk fat. The addition of harmless coloring matter is
94 permitted;

95 (n) Ice cream is a frozen substance made from pure,
96 wholesome milk products sweetened with sugar and may
97 contain not to exceed one half of one per cent gelatin,
98 vegetable gum or other wholesome stabilizer. When
99 wholesome and harmless flavoring extracts are used, ice
100 cream shall contain not less than eight per cent milk fat
101 and ten percent milk solids not fat. When eggs, fruits,
102 nuts, chocolate or cake are used, such reduction in the
103 percentage of milk fat and milk solids not fat shall be
104 allowed as may be caused by the addition of such ingred-
105 ients;

106 (o) Half and half is a product consisting of a mixture
107 of milk and cream which contains not less than eleven
108 and one-half per cent milk fat;

109 (p) Sour cream is cream the acidity of which is more
110 than two tenths of one per cent, expressed as lactic acid,
111 which contains not less than eighteen per cent milk fat;

112 (q) Cottage cheese is the soft uncured cheese prepared
113 from the curd obtained by adding harmless, lactic-acid-
114 producing bacteria, with or without enzymatic action, to
115 pasteurized skimmed milk or pasteurized reconstituted
116 skimmed milk. It contains not more than eighty per cent
117 moisture;

118 (r) Creamed cottage cheese is the soft uncured cheese
119 prepared by mixing cottage cheese with pasteurized cream
120 or a pasteurized mixture of cream with milk or skimmed
121 milk or both. Such cream or mixture is used in such
122 quantity that the milk fat added thereby is not less than
123 four per cent by weight of the finished creamed cottage
124 cheese. The finished creamed cottage cheese contains not
125 more than eighty per cent moisture;

126 (s) Homogenized milk is milk which has been treated
127 in such a manner as to insure breakup of the fat globules
128 to such an extent that, after forty-eight hours of quiescent
129 storage, no visible cream separation occurs on the milk,
130 and the fat percentage of the top one hundred milliliters

131 of milk in a quart bottle, or of proportionate volumes in
132 containers of other sizes, does not differ by more than
133 ten per cent of itself from the fat percentage of the re-
134 maining milk as determined after thorough mixing. The
135 word "milk" shall be interpreted to include homogenized
136 milk;
137 (t) Vitamin D milk is milk the vitamin D content of
138 which has been increased by an approved method to at
139 least four hundred U.S.P. units per quart.

CHAPTER 6

(House Bill No. 285—By Mr. Liller)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions regulating nurserymen and dealers in nursery stock.

Article 12. Insects and Plant Diseases.

Section

1. Definitions.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Definitions.*—The following words, as used
2 in this article, unless the context otherwise requires or a
3 different meaning is specifically prescribed, shall have the
4 following meaning:

5 (a) "Commissioner," the state commissioner of agri-
6 culture;

7 (b) "Plant" or "plants," nursery stock, orchard, fruit,
8 forest and shade trees, vines, cuttings, seeds and bulbs,

9 plants or parts of plants, or any products of the foregoing;
10 (c) "Insects" or "plant disease," any dangerously in-
11 jurious insects or plant disease, in any stage of their de-
12 velopment, which have been or may hereafter be adjudged
13 and published by the commissioner as necessary to con-
14 trol or eradicate;

15 (d) "Nursery stock," all florist stock, trees, shrubs,
16 vines, cuttings, grafts, scions, buds, fruit pits and other
17 seeds of fruit and ornamental trees and shrubs, and other
18 plants and plant products for propagation, except field,
19 vegetable, and flower seeds, bedding plants, and other
20 herbaceous bulbs and roots;

21 (e) "Nursery," any grounds or premises on which nur-
22 sery stock is grown or in which nursery stock is propa-
23 gated and grown for sale, or any grounds or premises on
24 or in which nursery stock is being fumigated, treated,
25 packed or stored;

26 (f) "Nurseryman," the person who owns, leases, man-
27 ages or is in charge of a nursery;

28 (g) "Dealer," any person not a grower of nursery stock
29 who buys or receives on consignment for the purpose of
30 offering for sale, receiving orders, or selling nursery stock
31 for the purpose of reselling and reshipping;

32 (h) "Agent," any person selling nursery stock under
33 the partial or full control of a nurseryman, or of a
34 dealer or other agent, or any person engaged with a nur-
35 seryman, dealer or agent in handling nursery stock on a
36 cooperative basis.

CHAPTER 7

(House Bill No. 232—By Mr. Slonaker and Mr. Kelley)

[Passed March 6, 1961: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-a, relating to the distribution, sale, advertisement, or transportation of adulterated or misbranded insecticides, fungi-

cides, herbicides, rodenticides, defoliants, desiccants, plant growth regulators, nematocides, other economic poisons and devices, and regulating traffic therein; providing for registration and examination of such materials, imposing penalties, and for other purposes.

Article 16-a. Pesticides.

Section

1. Title.
2. Definitions.
3. Prohibited acts.
4. Registration; board of review.
5. Determinations; rules and regulations; "Stop Sale" orders; right of access; samples; appeals from commissioner's decisions; uniformity.
6. Enforcement.
7. Exemptions.
8. Penalties.
9. Seizures; disposition of condemned items; court costs and expenditures.
10. Delegation of duties.
11. Cooperation.
12. Separability.
13. Repeals.

Be it enacted by the Legislature of West Virginia:

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

- Section 1. *Title.*—This article shall be known as the
2 "Pesticide Act of One Thousand Nine Hundred Sixty-one."

Sec. 2. *Definitions.*—For the purpose of this article:

- 2 A. The term "economic poison" means—
3 1. Any substance or mixture of substances intended for
4 preventing, destroying, repelling, or mitigating any un-
5 desirable insects, rodents, nematodes, fungi, weeds, and
6 other forms of plant or animal life or viruses, except
7 viruses on or in living man or other animals, or which the
8 commissioner may declare to be a pest, and
9 2. Any substance or mixture of substances intended for
10 use as a plant regulator, defoliant, desiccant, or herbi-
11 cide.
12 B. The term "device" means any instrument or con-
13 trivance intended for trapping, destroying, repelling, or

14 mitigating insects or rodents or destroying, repelling, or
15 mitigating fungi, nematodes, or such other pests as may
16 be designated by the commissioner, but not including
17 equipment used for the application of economic poisons
18 when sold separately therefrom.

19 C. The term "insecticide" means any substance or mix-
20 ture of substances intended for preventing, destroying,
21 repelling or mitigating any insects which may be present
22 in any environment whatsoever.

23 D. The term "fungicide" means any substance or mix-
24 ture of substances intended for preventing, destroying,
25 repelling or mitigating any fungi.

26 E. The term "rodenticide" means any substance or mix-
27 ture of substances intended for preventing, destroying,
28 repelling or mitigating any undesirable rodents or any
29 other vertebrate animals or others which the commis-
30 sioner may declare to be a pest.

31 F. The term "herbicide" means any substance or mix-
32 ture of substances intended for preventing, destroying,
33 repelling or mitigating any weed.

34 G. The term "nematocide" means any substance or mix-
35 ture of substances intended for preventing, destroying,
36 repelling or mitigating nematodes.

37 H. The term "plant regulator" means any substance
38 or mixture of substances, intended through physiological
39 action, for accelerating or retarding the rate of growth
40 or rate of maturation, or for otherwise altering the be-
41 havior of ornamental or crop plants or the produce there-
42 of, but shall not include substances to the extent that
43 they are intended as plant nutrients, trace elements, nu-
44 tritional chemicals, plant inoculants, and soil amend-
45 ments.

46 I. The term "defoliant" means any substance or mix-
47 ture of substances intended for causing the leaves or
48 foliage to drop from a plant, with or without causing
49 abscission.

50 J. The term "desiccant" means any substance or mix-
51 ture of substances intended for artificially accelerating the
52 drying of plant tissues.

53 K. The term "nematode" means invertebrate animals
54 of the phylum nemathelminthes, that is, unsegmented
55 round worms with elongated, fusiform, or saclike bodies

56 covered with cuticle, and inhabiting soil, water, animals,
57 plants or plant parts; may also be called nemas or eel-
58 worms.

59 L. The term "insect" means any of the numerous small
60 invertebrate animals generally having the body more or
61 less obviously segmented, for the most part belonging to
62 the class insecta, comprising six-legged, either winged or
63 wingless forms, as, for example, beetles, bugs, bees, flies,
64 aphids and termites, and to other allied classes of artho-
65 pods whose members are wingless and usually have more
66 than six legs, as, for example, spiders, mites, ticks, centi-
67 pedes, and wood lice.

68 M. The term "fungi" means all non-chlorophyll-bearing
69 thallophytes (this is, all non-chlorophyll-bearing plants
70 of a lower taxonomic rank than mosses and liverworts)
71 as, for example, rusts, smuts, mildews, molds, yeasts, and
72 bacteria, except those on or in living man or other ani-
73 mals.

74 N. The term "weed" means any plant which grows
75 where not wanted.

76 O. The term "ingredient statement" means either—

77 1. A statement of the name and percentage of each
78 active ingredient, together with the total percentage of
79 the inert ingredients, in the economic poison; or

80 2. A statement of the name of each active ingredient,
81 together with the name of each and total percentage of
82 the inert ingredients, if any there be, in the economic
83 poison (except option one shall apply if the preparation
84 is highly toxic to man, determined as provided in section
85 five of this article); and, in addition to one or two in case
86 the economic poison contains arsenic in any form, a state-
87 ment of the percentages of total and water soluble arsenic,
88 each calculated as elemental arsenic.

89 P. The term "active ingredient" means—

90 1. In the case of an economic poison other than a plant
91 regulator, defoliant or desiccant, an ingredient which will
92 prevent, destroy, repel, or mitigate insects, nematodes,
93 fungi, rodents, weeds, or other pests;

94 2. In the case of a plant regulator, an ingredient which,
95 through physiological action, will accelerate or retard the
96 rate of growth or rate of maturation or otherwise alter

97 the behavior of ornamental or crop plants or the produce
98 thereof;

99 3. In the case of a defoliant, an ingredient which will
100 cause the leaves or foliage to drop from a plant;

101 4. In the case of a desiccant, an ingredient which will
102 artificially accelerate the drying of plant tissues.

103 Q. The term "name" as applied to the active ingredient
104 shall be designated by an accepted chemical name and in
105 addition the accepted common name, or by a common name
106 promulgated by the commissioner. It is recommended
107 that the commissioner adopt the nomenclature approved
108 by the interdepartmental committee on pest control or the
109 American standards committee or any national committee
110 similarly functioning.

111 R. The term "inert ingredient" means an ingredient
112 which is not an active ingredient.

113 S. The term "antidote" means the most practical im-
114 mediate treatment in case of poisoning and includes first
115 aid treatment.

116 T. The term "person" means any individual, partner-
117 ship, association, corporation, or organized group of per-
118 sons whether incorporated or not.

119 U. The term "commissioner" means the commissioner
120 of agriculture.

121 V. The term "registrant" means the person registering
122 any economic poison pursuant to the provisions of this
123 article.

124 W. The term "label" means the written, printed, or
125 graphic matter on, or attached to, the economic poison or
126 device, or the immediate container thereof, and the out-
127 side container or wrapper of the retail package, if any
128 there be, of the economic poison or device.

129 X. The term "labeling" means all labels and other writ-
130 ten, printed, graphic matter, or advertising—

131 1. Upon the economic poison or device or any of its
132 containers or wrappers;

133 2. Accompanying the economic poison or device at any
134 time;

135 3. To which reference is made on the label or in litera-
136 ture accompanying the economic poison or device, except
137 when accurate, nonmisleading reference is made to cur-
138 rent official publications of the United States departments

139 of agriculture or interior, the United States public health
140 service, state experiment stations, state agricultural col-
141 leges, or other similar federal institutions or official
142 agencies of this state or other states authorized by law
143 to conduct research in the field of economic poisons;

144 4. Conveyed in any public media such as newspapers,
145 periodicals, radio or television, relative to the offering for
146 sale of any economic poison or device.

147 Y. The term "adulterated" shall apply to any economic
148 poison if its strength or purity falls below or is in excess
149 of the professed standard or quality as expressed on label-
150 ing or under which it is sold, or if any substance has been
151 substituted wholly or in part for the article, or if any
152 valuable constituent of the article has been wholly or in
153 part abstracted.

154 Z. The term "misbranded" shall apply—

155 1. To any economic poison or device if its labeling bears
156 any statement, design, or graphic representation relative
157 thereto or to its ingredients which is false or misleading
158 in any particular;

159 2. To any economic poison—

160 a. If it is an imitation of or is offered for sale under
161 the name of another economic poison;

162 b. If its labeling bears any reference to registration
163 under this article;

164 c. If the labeling accompanying it does not contain
165 directions for use which are necessary and, if complied
166 with, adequate for the protection of the public;

167 d. If the label does not contain a warning or caution
168 statement which may be necessary and, if complied with,
169 adequate to prevent injury to living man and other ver-
170 tebrate animals, vegetation, and useful invertebrate ani-
171 mals;

172 e. If the label does not bear an ingredient statement
173 on that part of the immediate container and on the out-
174 side container or wrapper, if there be one, through which
175 the ingredient statement on the immediate container can-
176 not be clearly read, of the retail package which is pre-
177 sented or displayed under customary conditions of pur-
178 chase;

179 f. If any word, statement, or other information required
180 by or under authority of this article to appear on the

181 label or labeling is not prominently placed thereon with
182 such conspicuousness (as compared with other words,
183 statement, designs, or graphic matter in the labeling) and
184 in such terms as to render it likely to be read and under-
185 stood by the ordinary individual under customary condi-
186 tions of purchase and use;

187 g. If in the case of an insecticide, nematocide, fungicide,
188 or herbicide when used as directed or in accordance with
189 commonly recognized practice it shall be injurious to
190 living man or other vertebrate animals, except weeds to
191 which it is applied, or to the person applying such eco-
192 nomic poison; or

193 h. If in the case of a plant regulator, defoliant, or desic-
194 cant when used as directed it shall be injurious to living
195 man or other vertebrate animals, or vegetation to which it
196 is applied, or to the person applying such economic poison:
197 *Provided*, That physical or physiological effects on plants
198 or parts thereof shall not be deemed to be injury, when
199 this is the purpose for which the plant regulator, defoliant,
200 or desiccant was applied, in accordance with the label
201 claims and recommendations.

Sec. 3. *Prohibited Acts.*—A. It shall be unlawful for
2 any person to distribute, sell, or offer for sale within this
3 state or deliver for transportation or transport in intra-
4 state commerce or between points within this state through
5 any point outside this state any of the following:

6 1. Any economic poison which has not been registered
7 pursuant to the provisions of section four of this article,
8 or any economic poison if any of the claims made for it
9 or any of the directions for its use differ in substance from
10 the representations made in connection with its regis-
11 tration, or if the composition of an economic poison differs
12 from its composition as represented in connection with
13 its registration: *Provided*, That, in the discretion of the
14 commissioner, a change in the labeling or formula of an
15 economic poison may be made within a registration period
16 without requiring reregistration of the product.

17 2. Any economic poison unless it is in the registrant's
18 or the manufacturer's unbroken immediate container, and
19 there is affixed to such container, and to the outside con-
20 tainer or wrapper of the retail package, if there be one.

- 21 through which the required information on the immediate
22 container cannot be clearly read, a label bearing:
- 23 a. The name and address of the manufacturer, regis-
24 trant, or person for whom manufactured;
- 25 b. The name, brand, or trade-mark under which said
26 item is sold; and
- 27 c. The net weight or measure of the content subject,
28 however, to such reasonable variations as the commis-
29 sioner may permit.
- 30 3. Any economic poison which contains any substance
31 or substances in quantities toxic to man, determined as
32 provided in section five of this article, unless the label
33 shall bear, in addition to any other matter required by
34 this article:
- 35 a. The skull and crossbones;
- 36 b. The word "poison" prominently, in red, on a back-
37 ground of distinctly contrasting color; and
- 38 c. A statement of an antidote for the economic poison.
- 39 4. The economic poison commonly known as standard
40 lead arsenate, basic lead arsenate, calcium arsenate, sodi-
41 um arsenite, arsenious oxide, disodium methyl arsenate,
42 magnesium arsenate, zinc arsenate, zinc arsenite, sodium
43 fluoride, sodium fluosilicate, barium fluosilicate, and any
44 other compounds containing arsenic or fluorine, unless
45 they have been distinctly colored or discolored as provided
46 by regulations issued in accordance with this article, or
47 any other white powder economic poison which the com-
48 missioner, after investigation of and after public hearing
49 on the necessity for such action for the protection of the
50 public health and the feasibility of such coloration or dis-
51 coloration, shall, by regulation, require to be distinctly
52 colored or discolored; unless it has been so colored or dis-
53 colored: *Provided*, That the commissioner may exempt
54 any economic poison to the extent that it is intended for a
55 particular use or uses from the coloring or discoloring re-
56 quired or authorized by this section if he determines that
57 such coloring or discoloring for such use or uses is not
58 necessary for the protection of the public health.
- 59 5. Any economic poison which is adulterated or mis-
60 branded, or any device which is misbranded.
- 61 B. It shall be unlawful—

62 1. For any person to detach, alter, deface, or destroy,
63 in whole or in part, any label or labeling provided for in
64 this article or regulations promulgated hereunder, or to
65 add any substance to, or take any substance from, an eco-
66 nomic poison in a manner that may defeat the purpose
67 of this article;

68 2. For any person to use for his own advantage or to
69 reveal, other than to the commissioner or proper officials
70 or employees of the state or to the courts of this state in
71 response to a subpoena, or to physicians, or in emer-
72 gencies to pharmacists and other qualified persons, for
73 use in the preparation of antidotes, any information
74 relative to formulas of products acquired by authority of
75 section four of this article.

Sec. 4. *Registration; Board of Review.*—A. Every eco-
2 nomic poison which is distributed, sold, or offered for sale
3 within this state or delivered for transportation or trans-
4 ported in intrastate commerce or between points within
5 this state through any point outside this state shall be reg-
6 istered in the office of the commissioner, and such registra-
7 tion shall be renewed annually: *Provided*, That products
8 which have the same formula, are manufactured by the
9 same person, the labeling of which contains the same
10 claims, and the labels of which bear a designation identify-
11 ing the product as the same economic poison may be regis-
12 tered as a single economic poison; and additional names
13 and labels shall be added by supplement statements dur-
14 ing the current period of registration. The period of regis-
15 tration shall be for one year, beginning January one and
16 ending December thirty-one of that year. The registrant
17 shall file with the commissioner a statement including:

18 1. The name and address of the registrant and the name
19 and address of the person whose name will appear on
20 the label, if other than the registrant;

21 2. The name of the economic poison;

22 3. A complete copy of the labeling accompanying the
23 economic poison and a statement of all claims to be made
24 for it including directions for use; and

25 4. If requested by the commissioner a full description
26 of the tests made and the results thereof upon which the
27 claims are based, and the analytical method or methods

28 employed in determining the percentage of each active
29 ingredient listed on the label to be registered. In the case
30 of renewal of registration, a statement shall be required
31 only with respect to information which is different from
32 that furnished when the economic poison was registered
33 or last registered.

34 B. The registrant shall pay an annual fee of ten dollars
35 for the first twenty economic poisons registered and five
36 dollars for each additional label registered. Such fees to be
37 deposited in the treasury of the state and to the credit of
38 a special fund to be used only for carrying out the pro-
39 visions of this article, and shall be expended upon order
40 of the commissioner of agriculture.

41 C. The commissioner, whenever he deems it necessary
42 in the administration of this article, may require the sub-
43 mission of the complete formula of any economic poison.
44 If it appears to the commissioner that the composition
45 of the item is such as to warrant the proposed claims for
46 it and if the item and its labeling and other material
47 required to be submitted to comply with the requirements
48 of section three of this article, he shall register the item.

49 D. If it does not appear to the commissioner that the
50 item is such as to warrant the proposed claims for it or if
51 the item and its labeling and other material required to be
52 submitted do not comply with the provisions of this
53 article, he shall notify the registrant of the manner in
54 which the item, labeling, or other material required to
55 be submitted fails to comply with this article so as to
56 afford the registrant an opportunity to make the neces-
57 sary corrections. If, upon receipt of such notice, the
58 registrant insists that such corrections are not necessary
59 and requests in writing that the item be registered, a
60 review of this matter may be brought before a board of
61 review.

62 1. The board of review shall consist of five individual
63 members.

64 a. Two of these members shall be appointed by the
65 dean of the college of agriculture, forestry and home
66 economics of West Virginia university.

67 b. One member of the board of review shall be ap-
68 pointed by the commissioner of agriculture.

69 c. One member of the board of review shall be ap-
70 pointed by the registrant.

71 d. One member of the board of review shall be ap-
72 pointed by the governor of the state of West Virginia and
73 shall act as chairman.

74 2. This board shall have the power to subpoena wit-
75 nesses and employ competent help.

76 3. The decision of this board of review shall be final.

77 4. All expenses of the board shall be paid by the com-
78 missioner, except all salaries, fees and expenses accrued
79 by the appointee of the registrant.

80 E. In order to protect the public, the commissioner,
81 on his own motion, may at any time, cancel the registra-
82 tion of an economic poison.

83 F. Notwithstanding any other provisions of this article,
84 registration is not required in the case of an economic
85 poison shipped from one plant within this state to another
86 plant within this state operated by the same person.

Sec. 5. *Determinations; Rules and Regulations; "Stop
2 Sale" Orders; Right of Access; Samples; Appeals from
3 Commissioner's Decisions; Uniformity.*—A. The commis-
4 sioner is authorized, after opportunity for a hearing:

5 1. To declare as a pest any form of plant or animal life
6 or virus which is injurious or undesirable to plants, man,
7 domestic animals, articles, or substances;

8 2. To determine whether economic poisons are highly
9 toxic to man; and

10 3. To determine standards of coloring or discoloring for
11 economic poisons, and to subject economic poisons to the
12 requirements of section three, A, four of this article.

13 B. The commissioner of agriculture is hereby charged
14 with the enforcement of the provisions of this article, and
15 is empowered to prescribe and enforce rules and regula-
16 tions consistent with this article in carrying out its pro-
17 visions.

18 1. The commissioner is hereby authorized to fix mini-
19 mum and/or maximum standards or requirements cover-
20 ing all economic poisons and devices, and to prohibit and
21 to prevent the sale of such worthless, deleterious or ques-
22 tionable items.

23 2. Whenever it appears that any economic poison or

24 device is being offered or exposed for sale in this state
25 in violation of any of the provisions of this article, the
26 commissioner is hereby authorized to issue a written
27 or printed "stop sale" order or "embargo", and it shall
28 be unlawful for any person, firm, corporation or manu-
29 facturer to permit any such economic poison or device
30 to be moved or disposed of in any manner except upon
31 written order of the commissioner of agriculture or by
32 court order. The commissioner shall cause notice of such
33 violation to be given to the person affected thereby, and
34 any person so notified shall be given an opportunity to be
35 heard under such rules and regulations as the commis-
36 sioner may prescribe. After such hearing if it still fur-
37 ther appears that any of the provisions of this article
38 have been violated, the commissioner may institute pro-
39 ceedings in any court of competent jurisdiction for the
40 disposal of such economic poisons and/or devices.

41 3. The commissioner or his agent shall have free access
42 to all places of business, mills, buildings and conveyances
43 of any kind used in the transportation, importation, manu-
44 facture, sale or storage of any economic poison or device,
45 with power and authority to open any parcel containing
46 or supposed to contain any economic poison or device,
47 and upon full payment of the selling price, to take there-
48 from samples for analyses, and to examine the books and
49 all records pertaining to the shipment, manufacture, sale
50 or distribution of any economic poison or device.

51 C. Nothing contained in this article shall prevent any
52 person from appealing from the commissioner's decision,
53 and the circuit court of the county in which the alleged
54 infraction occurred shall have jurisdiction thereof.

55 D. In order to avoid confusion endangering the public
56 health, resulting from diverse requirements, particularly
57 as to the labeling and coloring of economic poisons, and
58 to avoid increased costs to the people of this state due to
59 the necessity of complying with such diverse require-
60 ments in the manufacture and sale of such poisons, it
61 is desirable that there should be uniformity between the
62 requirements of the several states and the federal gov-
63 ernment relating to such poisons. To this end the com-
64 missioner is authorized, after due public hearing, to adopt

65 by regulation such regulations, applicable to and in con-
66 formity with the primary standards established by this
67 article, as have been or may be prescribed by appropriate
68 federal agencies with respect to economic poisons.

Sec. 6. *Enforcement.*—A. The examination of economic
2 poisons or devices shall be made under the direction of
3 the commissioner for the purpose of determining whether
4 they comply with the requirements of this article. If
5 it shall appear from such examination that an economic
6 poison or device fails to comply with the provisions of
7 this article, and the commissioner contemplates institut-
8 ing criminal proceedings against any person, the com-
9 missioner shall cause appropriate notice to be given to
10 such person. Any person so notified shall be given an op-
11 portunity to present his views, either orally or in writing,
12 with regard to such contemplated proceedings and if
13 thereafter in the opinion of the commissioner it shall
14 appear that the provisions of this article have been vio-
15 lated by such person, then the commissioner may insti-
16 tute suit in a court of competent jurisdiction: *Provided,*
17 *however,* That nothing in this article shall be construed
18 as requiring the commissioner to report for prosecution
19 or for the institution of libel proceedings minor violations
20 of this article whenever he believes that the public
21 interest will be best served by a suitable notice of warn-
22 ing in writing.

23 B. The commissioner shall, by publication in such man-
24 ner as he may prescribe, give notice of all judgments en-
25 tered in actions instituted under the authority of this
26 article.

Sec. 7. *Exemptions.*—A. The penalties provided for vio-
2 lations of section three, A of this article shall not apply
3 to:

4 1. Any carrier while lawfully engaged in transporting
5 an economic poison within this state, if such carrier shall,
6 upon request, permit the commissioner or his designated
7 agent to copy all records showing the transactions in and
8 movement of the articles;

9 2. Public officials of this state and the federal govern-
10 ment engaged in the performance of their official duties;

11 3. The manufacturer or shipper of an economic poison
12 for experimental use only—

13 a. By or under the supervision of an agency of this
14 state or of the federal government authorized by law
15 to conduct research in the field of economic poisons, or

16 b. By others if the economic poison is not sold and if
17 the container thereof is plainly and conspicuously marked
18 "for experimental use only—not to be sold", together with
19 the manufacturer's name and address: *Provided, however,*
20 That if a written permit has been obtained from the com-
21 missioner, economic poisons may be sold for experimental
22 purposes subject to such restrictions and conditions as
23 may be set forth in the permit.

24 B. No item shall be deemed in violation of this article
25 when intended solely for export to a foreign country, and
26 when prepared or packaged according to the specifications
27 or directions of the purchaser. If not so exported, all the
28 provisions of this article shall apply.

Sec. 8. *Penalties.*—A. Any person violating section
2 three, A, one of this article shall be guilty of a misde-
3 meanor and upon conviction shall be fined not more than
4 one thousand dollars.

5 B. Any person violating any provision of this article
6 other than section three, A, one shall be guilty of a mis-
7 demeanor and upon conviction shall be fined not more
8 than one thousand dollars for the first offense and upon
9 conviction for a subsequent offense shall be fined not more
10 than two thousand dollars: *Provided, That* any offense
11 committed more than five years after a previous convic-
12 tion shall be considered a first offense: *And provided*
13 *further,* That in any case where a registrant was issued
14 a warning by the commissioner pursuant to the provisions
15 of this article, such registrant shall upon conviction of
16 a violation of any provision of this article other than
17 section three, A, one be fined not more than three thou-
18 sand dollars, and the registration of the item with refer-
19 ence to which the violation occurred shall terminate auto-
20 matically. An item the registration of which has been
21 terminated may not again be registered unless the item,
22 its labeling, and other material required to be submitted

23 appear to the commissioner to comply with all the re-
24 quirements of this article.

25 C. Notwithstanding any other provisions of this section,
26 in case any person, with intent to defraud, uses or reveals
27 information relative to formulas of products acquired
28 under authority of section four of this article, he shall
29 be fined not more than five thousand dollars or imprisoned
30 for not more than one year, or both.

Sec. 9. *Seizures; Disposition of Condemned Items; Court*
2 *Costs and Expenditures.*—A. Any economic poison or de-
3 vice that is distributed, sold, or offered for sale within this
4 state or delivered for transportation or transported in
5 intrastate commerce or between points within this state
6 through any point outside this state shall be liable to be
7 proceeded against in any court of competent jurisdiction in
8 any county of the state where it may be found and seized
9 for confiscation by process of libel for condemnation:

10 1. In the case of an economic poison,
11 a. If it is adulterated or misbranded;
12 b. If it has not been registered under the provisions
13 of section four of this article;
14 c. If it fails to bear on its label the information required
15 by this article;
16 d. If it is a white powder economic poison and is not
17 colored as required under this article.

18 2. In the case of a device, if it is misbranded.
19 B. If the item is condemned, it shall, after entry of
20 decree, be disposed of by destruction or sale as the court
21 may direct and the proceeds, if such item is sold, less
22 legal costs, shall be paid to the state treasurer: *Provided*,
23 That the item shall not be sold contrary to the provision
24 of this article: *And provided further*, That upon payment
25 of costs and execution and delivery of a good and sufficient
26 bond conditioned that the item shall not be disposed of
27 unlawfully, the court may direct that said item be de-
28 livered to the owner thereof for relabeling or reprocessing
29 as the case may be.

30 C. When a decree of condemnation is entered against
31 an item, court costs and fees and storage and other proper
32 expenses shall be awarded against the person, if any, in-
33 tervening as claimant of the item.

Sec. 10. *Delegation of Duties.*—All authority vested in the commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the department of agriculture as the commissioner may from time to time designate for said purpose.

Sec. 11. *Cooperation.*—The commissioner is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States department of agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this article and securing uniformity of regulations.

Sec. 12. *Separability.*—If any provision of this article is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this article and the applicability thereof to other persons and circumstances shall not be affected thereby.

Sec. 13. *Repeals.*—Jurisdiction in all matter pertaining to the distribution, sale and transportation of economic poisons and devices is by this article vested exclusively in the commissioner, and all acts and parts of acts inconsistent with this article are hereby expressly repealed.

CHAPTER 8

(Com. Sub. for Senate Bill No. 1—Originating
in the Senate Committee on Finance)

[Passed March 11, 1961; in effect from passage.]

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

Title

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

Title 1. General Provisions.**Section**

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

Be it enacted by the Legislature of West Virginia:

Section 1. *General Policy.*—The purpose of this act 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 hundred
5 sixty-two.

Sec. 2. *Definitions.*—For the purpose of this act:

2 “Board” shall mean the board of public works;

3 “Spending unit” shall mean the department, agency or
4 institution to which an appropriation is made;

5 The “fiscal year one thousand nine hundred sixty-two”
6 shall mean the period from July first, one thousand nine
7 hundred sixty-one through June thirtieth, one thousand
8 nine hundred sixty-two.

9 “From collections” shall mean that part of the total ap-
10 propriation which must be collected by the spending unit to
11 be available for expenditure. If the authorized amount of
12 collections is not collected, the total appropriation for the
13 spending unit shall be reduced automatically by the amount
14 of the deficiency in the collection. If the amount collected
15 exceeds the amount designated “from collections” the excess
16 shall be set aside in a special surplus fund and may be ex-
17 pended for the purpose of the spending unit as provided by
18 chapter thirty-nine, acts of the legislature, regular session,
19 one thousand nine hundred thirty-nine.

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

3 “Personal services” shall be expended only for the pay-
4 ment of salaries, wages, fees, and other compensation for
5 skill, work, or employment;

6 Unless otherwise specified, appropriations for personal
7 services shall include salaries of heads of spending unit.

8 “Current expenses” shall be expended only for operating
9 cost other than personal services or capital outlay;

10 "Repairs and alterations" shall include all expenditures
11 for materials, supplies and labor used in repairing and alter-
12 ing buildings, grounds and equipment;

13 "Equipment" shall be expended only for things which
14 have an appreciable and calculable period of usefulness in
15 excess of one year;

16 "Buildings" shall include construction and alteration of
17 structures and the improvements of lands, sewer and water
18 improvements, and shall include shelter, support, storage,
19 protection, or the improvement of a natural condition;

20 "Lands" shall be expended only for the purchase of lands
21 or interest in lands.

22 Appropriations otherwise classified shall be expended
23 only where the distribution of expenditures for different
24 purposes cannot well be determined in advance or it is
25 necessary or desirable to permit the spending unit freedom
26 to spend an appropriation for more than one of the above
27 purposes.

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 arti-
4 cle three, chapter twelve of the code of West Virginia, one
5 thousand nine hundred thirty-one, or according to any law
6 detailing a procedure specifically limiting that article.

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State board of education (special capital improvement fund)—Acct. No. 854	79
State committee of barbers and beauticians—Acct. No. 822	74
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Department of motor vehicles—Acct. No. 671	69. 82
State road commission (general administration and engineering)—Acct. No. 670	68
State tax commissioner (gasoline tax division)—Acct. No. 672	69

PAYABLE FROM GENERAL SCHOOL FUND

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Department of education (salaries of county superintendents)—Acct. No. 706	71
Department of education (scholarships for teacher training)—Acct. No. 715	72
Department of education (school lunch program)—Acct. No. 705	71
Department of education (state aid to children's homes)—Acct. No. 707	71
Department of education (veterans education)—Acct. No. 702	70
State board of education—Acct. No. 700	69
State board of education (vocational division)—Acct. No. 701	69
State board of school finance—Acct. No. 704	71
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PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900	79
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3. Supplemental and deficiency appropriations.
4. Awards for claims against the state.
5. Appropriations from surplus revenues.
6. Appropriations for emergency relief of unemployment.
7. Reappropriations.
8. Special revenue appropriations.
9. Specific funds and collection accounts.
10. Appropriations for refunding erroneous payments.
11. Sinking fund deficiencies.
12. Appropriations from taxes and license fees.
13. Appropriations to pay costs of publication of delinquent corporations.
14. Appropriations for local governments.
15. Total appropriations.
16. General school fund.

Section 1. *Appropriations from General Revenue.*—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred sixty-two.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1961-62
1 Salaries of Members	\$ 49,500.00
2 Compensation and per diem of officers and	
3 attaches	50,000.00
4 Mileage of Members	2,000.00
5 Current Expenses and Contingent Fund	85,000.00
6 To pay Clerk of the Senate for compiling and	
7 publishing the West Virginia Blue Book,	
8 the distribution of which shall be made by	
9 the Office of the Clerk of the Senate and	
10 shall include seventy-five copies for each	
11 member of the Legislature and two copies	
12 to each classified and approved High and	
13 Junior High School and one to each Ele-	
14 mentary School within the state	10,000.00
15 To pay cost of printing the 1961 edition of	
16 Blue Book	46,000.00
17 Drafting Service	7,500.00
18 The appropriations for the Senate for the	
19 fiscal year 1960-61 are to remain in full	
20 force and effect, and are hereby reappro-	
21 priated to June 30, 1962.	
22 Any balances so reappropriated may be trans-	
23 ferred and credited to the 1961-62 accounts.	
24 Upon the written request of the Clerk of the	
25 Senate the State Auditor shall transfer	
26 amounts between items of the total appro-	
27 priation in order to protect or increase the	
28 efficiency of the service.	

29 The Clerk of the Senate is authorized to draw
 30 his requisitions upon the Auditor, payable
 31 out of the contingent fund of the Senate,
 32 for any bills for supplies and services that
 33 may have been incurred by the Senate and
 34 not included in the appropriation bill, and
 35 for bills for supplies and services incurred
 36 after adjournment, and for the necessary
 37 operation of the Senate offices, the requisition
 38 for same to be accompanied by the bills
 39 to be filed with the Auditor.

2—House of Delegates

Acct. No. 102.

1 Salaries of Members	\$	150,000.00
2 Compensation and per diem of officers and		
3 attaches		75,000.00
4 Mileage of Members		5,000.00
5 Current Expenses and Contingent Fund		88,000.00
6 Drafting Service		5,000.00
7 An amount, not to exceed \$3,600.00 per year,		
8 is hereby authorized to be expended from		
9 the contingent fund of the House of Delegates		
10 for janitor services, etc.		
11 The House Committee on Rules, with the approval		
12 of the Speaker, is hereby authorized		
13 to expend from the House Contingent Fund		
14 for the fiscal year 1961-62 an amount, not		
15 to exceed the sum of Thirteen Thousand		
16 (\$13,000.00) Dollars, for the purposes of		
17 carpeting the House Chamber and altering		
18 the electrical wiring for the roll call and		
19 public address systems in said Chamber in		
20 the main unit of the Capitol Building.		
21 The appropriations for the House of Delegates		
22 for the fiscal year 1960-61 are to remain		
23 in full force and effect, and are hereby		
24 reappropriated to June 30, 1962.		
25 Any balances so reappropriated may be transferred		
26 and credited to the 1961-62 accounts.		

27 Upon the written request of the Clerk of the
 28 House of Delegates the State Auditor shall
 29 transfer amounts between items of the
 30 total appropriation in order to protect or
 31 increase the efficiency of the service.

32 The Clerk of the House of Delegates, with
 33 approval of the Speaker, is authorized to
 34 draw his requisitions upon the Auditor,
 35 payable out of the contingent fund of the
 36 House of Delegates, for any bills for sup-
 37 plies and services that may have been in-
 38 curred by the House of Delegates, and not
 39 included in the appropriation bill, for bills
 40 for services and supplies incurred in prep-
 41 aration for the opening of the session and
 42 after adjournment, and for the necessary
 43 operation of the House of Delegates offi-
 44 ces, the requisition for same to be accom-
 45 panied by bills to be filed with the Auditor.

46 For duties imposed by law and by the
 47 House of Delegates, including the salary
 48 allowed by law as keeper of the rolls, the
 49 Clerk of the House of Delegates shall be
 50 paid a salary of \$900.00 per month, payable
 51 from the contingent fund of the House of
 52 Delegates, and the Clerk may employ a
 53 secretary and a clerk at a salary not to
 54 exceed \$375.00 per month each, payable
 55 monthly from the same fund.

3—Joint Expenses

Acct. No. 103

1 To pay the cost of legislative printing and	
2 stationery	\$ 75,000.00
3 Commission on Interstate Cooperation	15,000.00
4 Joint Committee on Government and Finance	225,000.00
5 Other Authorized Legislative Committees ...	50,000.00
6 The appropriations for Joint Expenses for the	
7 fiscal year 1960-61 are to remain in full	
8 force and effect, and are hereby reappro-	

9 priated to June 30, 1962.
 10 Any balances so reappropriated may be trans-
 11 ferred and credited to the 1961-62 accounts.
 12 Upon the written request of the Clerk of the
 13 Senate and the Clerk of the House of Dele-
 14 gates the State Auditor shall transfer from
 15 the 1960-1961 appropriations, as reappro-
 16 priated by the 1961-62 Budget Act, for
 17 "Other Authorized Legislative Commit-
 18 tees" the sum of \$25,000.00 to Account No.
 19 101, Compensation and Per Diem of Officers
 20 and Attaches.
 21 Upon the written request of the Clerk of the
 22 Senate and Clerk of the House of Delegates,
 23 the State Auditor shall transfer amounts
 24 between items of the total appropriation
 25 in order to protect or increase the efficiency
 26 of the service.

JUDICIAL

4—Supreme Court of Appeals

Acct. No. 110

1	Salaries of Judges	\$	87,500.00
2	Other Personal Services		109,700.00
3	Current Expenses		22,000.00
4	Equipment		2,000.00
5	Total	\$	221,200.00

5—Judicial—Auditor's Office

Acct. No. 111

1	Salaries of Judges	\$	345,000.00
2	Other Personal Services		81,000.00
3	Current Expenses		26,000.00
4	Judges Retirement System		25,000.00
5	Criminal Charges		300,000.00
6	Total	\$	777,000.00

7 This appropriation shall be administered by
 8 the State Auditor who shall draw his re-
 9 quisition for warrants in payment of sal-
 10 aries in the form of payrolls, making de-
 11 ductions therefrom as required by law, for
 12 taxes and other items. The appropriation
 13 for Judges Retirement System is to be
 14 transferred to the Judges' Retirement
 15 Fund, in accordance with the law relating
 16 thereto, upon requisition of the State
 17 Auditor.

6—State Law Library

Acct. No. 114

1 Personal Services	\$	18,580.00
2 Current Expenses		2,000.00
3 Equipment		14,500.00
4 Total	\$	35,080.00

7—Judicial Council

Acct. No. 118

1 To pay expenses of Members of the council ..	\$	12,000.00
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EXECUTIVE

8—Governor's Office

Acct. No. 120

1 Salary of Governor	\$	17,500.00
2 Other Personal Services		56,547.00
3 Current Expenses		15,000.00
4 Equipment		1,500.00
5 Civil Contingent Fund		160,000.00
6 Of this appropriation there may be expended, 7 at the discretion of the Governor, an 8 amount not to exceed \$1,000.00 as West 9 Virginia's contribution to the Interstate Oil 10 Compact Commission.		
11 Custodial Fund		45,000.00

12 To be used for current general expenses, in-
 13 cluding compensation of servants and em-
 14 ployees, household maintenance, cost of of-
 15 ficial functions, and any additional house-
 16 hold expenses occasioned by such official
 17 functions.

18	Total	\$	295,547.00
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9—Board of Probation and Parole

Acct. No. 123

1	Personal Services	\$	187,360.00
2	Current Expenses		75,800.00
3	Equipment		2,000.00
<hr/>			
4	Total	\$	265,160.00

FISCAL

10—Auditor's Office—General Administration

Acct. No. 150

1	Salary of State Auditor	\$	11,000.00
2	Other Personal Services		293,680.00
3	Current Expenses		35,155.00
4	Equipment		27,500.00
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5	Total	\$	367,335.00

6 Any unexpended balance remaining in the
 7 appropriation "To match contributions of
 8 state employees for social security" at the
 9 close of the fiscal year 1960-61 is hereby
 10 reappropriated for expenditure during the
 11 fiscal year 1961-62.

11—Treasurer's Office

Acct. No. 160

1	Salary of State Treasurer	\$	11,000.00
2	Other Personal Services		99,000.00
3	Current Expenses		15,950.00

4	Equipment		12,500.00
5	Total	\$	138,450.00

12—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services	\$	19,800.00
2	Current Expenses		1,500.00
3	Total	\$	21,300.00

13—*State Tax Commissioner*

Acct. No. 180

1	Personal Services	\$	873,760.00
2	Current Expenses		234,470.00
3	Equipment		31,700.00
4	Administration, Enforcement and Collection		
5	under the West Virginia Personal Income		
6	Tax law (Senate Bill No. 106—1961 Legis-		
7	lature)		600,000.00
8	Total	\$	1,739,930.00

14—*State Tax Commissioner*

Acct. No. 185

1	Property Evaluation	\$	140,000.00
2	Property Appraisal		1,500,000.00
3	Total	\$	1,640,000.00

4 To be expended for "Property Evaluation"
 5 and "Property Appraisal" as provided by
 6 law.

7 Any unexpended balance remaining in the ac-
 8 count "For Property Appraisal, Tax Maps,
 9 etc., in accordance with the provisions of
 10 Senate Bill No. 34 (1958 Legislature)", as
 11 reappropriated, at the close of the fiscal
 12 year 1960-61 is hereby reappropriated for

13 expenditure during the fiscal year 1961-62.
 14 Any unexpended balance remaining in the ac-
 15 count "Reserve for Property Appraisal, Tax
 16 Maps, etc.", as reappropriated, at the close
 17 of the fiscal year 1960-61 is hereby reap-
 18 propriated for expenditure during the fiscal
 19 year 1961-62.

15—*State Commissioner of Public Institutions*

Acct. No. 190

1 Salary of Commissioner	\$	10,000.00
2 Other Personal Services		39,390.00
3 Current Expenses		8,275.00
4 Equipment		3,000.00
5 Total	\$	60,665.00

16—*Department of Finance and Administration*

Acct. No. 210

1 Personal Services	\$	479,860.00
2 Current Expenses		167,400.00
3 Repairs and Alterations		75,000.00
4 Equipment		14,500.00
5 Postage		90,000.00
6 Total	\$	826,760.00

7 The Workman's Compensation Commission,
 8 Department of Public Assistance, Public
 9 Service Commission, Natural Resources
 10 Commission, Department of Motor Vehi-
 11 cles, State Road Commission and State
 12 Health Department shall reimburse the
 13 Postage appropriation of the Department of
 14 Finance and Administration monthly for all
 15 meter service. Any spending unit receiving
 16 reimbursement for postage costs from the
 17 Federal Government shall refund to the
 18 Postage account of the Department of Fi-

19 nance and Administration such amounts.
 20 Should this appropriation for postage be in-
 21 sufficient to meet the mailing requirements
 22 of the state spending unit as set out above,
 23 any excess postage meter service require-
 24 ments shall be a proper charge against the
 25 units, and each spending unit shall refund
 26 to the Postage appropriation of the De-
 27 partment of Finance and Administration
 28 any amounts required for that department
 29 for postage in excess of this appropriation.
 30 Any unexpended balance remaining in the
 31 postage account at the close of the fiscal
 32 year 1960-61 is hereby reappropriated for
 33 expenditure during the fiscal year 1961-62.

17—*The Board of Public Works*

Acct. No. 220

1	Contingent Fund	\$	85,000.00
2	Out of the above appropriation the sum of		
3	\$60,000 shall be used to develop and im-		
4	prove the Morris Memorial Hospital prop-		
5	erty, if the board deems such expenditure		
6	advisable.		

18—*State Board of Insurance*

Acct. No. 225

1	Personal Services	\$	5,000.00
2	Current Expenses		2,200.00
3	Total	\$	7,200.00

LEGAL

19—*Attorney General*

Acct. No. 240

1	Salary of Attorney General	\$	12,000.00
2	Other Personal Services		144,840.00
3	Current Expenses		18,000.00

4	Equipment	7,500.00
5	To protect the resources or tax structure of	
6	the State in controversies or legal proceed-	
7	ings affecting same	4,000.00
8	Total	\$ 186,340.00

20—*Commisison on Uniform State Laws*

Acct. No. 245

1	Total	\$ 3,150.00
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INCORPORATING AND RECORDING

21—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$ 11,000.00
2	Other Personal Services	56,100.00
3	Current Expenses	10,680.00
4	Equipment	3,300.00
5	Total	\$ 81,080.00

EDUCATIONAL

22—*State Board of Education—Vocational Division*

Acct. No. 294

1	Total	\$ 500,000.00
2	To be transferred to General School Fund	
3	(Acct. No. 701) and to be administered in	
4	accordance with provisions of House Bill	
5	No. 7—1960 Legislature.	

23—*State Board of School Finance—State Aid to Schools*

Acct. No. 295

1	State Aid to supplement the General School	
2	Fund	\$ 58,080,585.00
3	Reimbursement to counties which suffer re-	

4	ductions in state aid formula allocations	
5	for instruction as a result of participation	
6	in experimental programs approved by the	
7	State Board of Education	40,000.00
8	Total	\$ 58,120,585.00
9	To be transferred to the General School Fund	
10	upon requisition of the Governor.	
11	The appropriation "State Aid to Supplement	
12	the General School Fund" to be distributed	
13	to counties as provided by law: <i>Provided,</i>	
14	That no county's state aid allocation shall	
15	be reduced more than five per cent from	
16	the allocation of the previous year.	

24—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

1	Personal Services	\$ 12,500.00
2	Current Expenses	4,000.00
3	Out-of-State Instruction	15,000.00
4	Aid to Counties	208,500.00
5	Total	\$ 240,000.00
6	The appropriation for out-of-state instruction	
7	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.	

25—*Department of Education—Textbook Aid*

Acct. No. 297

1	Textbooks for Schools	\$ 150,000.00
2	To be distributed according to chapter fifty-	
3	one, acts of the Legislature, regular ses-	
4	sion, 1939.	

26—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired Teach-	
2	ers	\$ 2,367,800.00

3	Employers' Accumulation Fund—to match	
4	contributions of members	3,344,000.00
5	Expense Fund	7,478.00
6	Total	\$ 5,719,278.00

27—*West Virginia University*

Acct. No. 300

1	Personal Services	\$ 7,489,662.00
2	Current Expenses	1,232,000.00
3	Repairs and Alterations	400,000.00
4	Equipment	483,000.00
5	Fire Insurance Premiums	75,000.00
6	Oak Wilt Control Research	10,000.00
7	State aid to students of Veterinary Medicine	48,000.00
8	State aid to Medical Students	15,000.00
9	Airport Hangar Relocation	100,000.00
10	Institute for Planning and Research	35,700.00
11	Total	\$ 9,888,362.00

12 Out of the above appropriation for Personal
 13 Services, the sum of \$8,500.00 shall be used
 14 only for the employment of a Spray Spe-
 15 cialist who shall be stationed only at West
 16 Virginia University Farm at Kearneysville,
 17 and \$7,200.00 for the employment of a Labor
 18 Specialist.

19 All or any part of the application for "Air-
 20 port Hangar Relocation" may be trans-
 21 ferred to Special Revenue Fund for the
 22 purpose of relocating hangar at Morgan-
 23 town.

28—*Potomac State College of West Virginia University*

Acct. No. 315

1	Personal Services	\$ 368,020.00
2	Current Expenses	57,250.00

3	Repairs and Alterations	36,300.00
4	Equipment	41,700.00
5	Total	\$ 503,270.00

29—*Marshall University*

Acct. No. 320

1	Personal Services	\$ 2,229,901.00
2	Current Expenses	235,900.00
3	Repairs and Alterations	67,800.00
4	Equipment	71,875.00
5	Flood Wall Assessment	3,200.00
6	Total	\$ 2,608,676.00

30—*Fairmont State College*

Acct. No. 321

1	Personal Services	\$ 727,740.00
2	Current Expenses	78,650.00
3	Repairs and Alterations	33,600.00
4	Equipment	31,700.00
5	Total	\$ 871,690.00

31—*Glenville State College*

Acct. No. 322

1	Personal Services	\$ 463,370.00
2	Current Expenses	69,215.00
3	Repairs and Alterations	43,180.00
4	Equipment	28,400.00
5	Rural Education Development Program	10,000.00
6	Total	\$ 614,165.00

32—*West Liberty State College*

Acct. No. 323

1	Personal Services	\$ 526,562.00
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2	Current Expenses	65,300.00
3	Repairs and Alterations	40,800.00
4	Equipment	25,000.00
5	Total	\$ 657,662.00

33—*Shepherd College*

Acct. No. 324

1	Personal Services	\$ 473,000.00
2	Current Expenses	65,250.00
3	Repairs and Alterations	29,800.00
4	Equipment	26,250.00
5	Total	\$ 594,300.00

34—*Concord College*

Acct. No. 325

1	Personal Services	\$ 805,745.00
2	Current Expenses	80,570.00
3	Repairs and Alterations	37,170.00
4	Equipment	35,850.00
5	Total	\$ 959,335.00
6	Any unexpended balance remaining in the	
7	appropriation for "Dormitory Equipment"	
8	at the close of the fiscal year 1959-60 and	
9	reappropriated for expenditure during the	
10	fiscal year 1960-61 is hereby reappropriated	
11	for expenditure during the fiscal year	
12	1961-62.	

35—*West Virginia Institute of Technology*

Acct. No. 327

1	Personal Services	\$ 658,180.00
2	Current Expenses	82,800.00
3	Repairs and Alterations	44,470.00

4	Equipment	79,480.00
5	Total	\$ 864,930.00

36—West Virginia State College

Acct. No. 328

1	Personal Services	\$ 1,041,620.00
2	Current Expenses	153,000.00
3	Repairs and Alterations	83,440.00
4	Equipment	46,100.00
5	Total	\$ 1,324,160.00

37—Bluefield State College

Acct. No. 329

1	Personal Services	\$ 383,605.00
2	Current Expenses	64,180.00
3	Repairs and Alterations	23,900.00
4	Equipment	68,200.00
5	Total	\$ 539,885.00

38—West Virginia State College 4-H Camp

Acct. No. 330

1	Personal Services	\$ 12,960.00
2	Current Expenses	5,000.00
3	Repairs and Alterations	3,500.00
4	Equipment	2,300.00
5	Total	\$ 23,760.00

39—West Virginia Schools for the Deaf and Blind

Acct. No. 333

1	Personal Services	\$ 437,286.00
2	Current Expenses	160,330.00
3	Repairs and Alterations	40,700.00
4	Equipment	19,850.00
5	Total	\$ 658,166.00

40—State FFA-FHA Camp and Conference Center

Acct. No. 336

1	Personal Services	\$	22,040.00
2	Current Expenses		6,000.00
3	Repairs and Alterations		5,600.00
4	Equipment		8,600.00
5	Total	\$	42,240.00

41—Department of Archives and History

Acct. No. 340

1	Personal Services	\$	30,700.00
2	Current Expenses		6,690.00
3	Equipment		7,100.00
4	Total	\$	44,490.00

42—West Virginia Library Commission

Acct. No. 350

1	Personal Services	\$	81,000.00
2	Current Expenses		5,000.00
3	Equipment		1,000.00
4	Books and Periodicals		30,000.00
5	Library Services for the Blind		5,000.00
6	Total	\$	122,000.00

CHARITIES AND CORRECTION

43—West Virginia Industrial School for Boys

Acct. No. 370

1	Personal Services	\$	196,418.00
2	Current Expenses		99,250.00
3	Repairs and Alterations		28,500.00
4	Equipment		18,250.00
5	Total	\$	342,418.00

44—Forestry Camp for Boys

Acct. No. 371

1 Personal Services	\$ 47,836.00
2 Current Expenses	63,854.00
3 Repairs and Alterations	2,500.00
4 Equipment	5,600.00
5 Total	\$ 119,790.00

45—West Virginia Industrial Home for Girls

Acct. No. 372

1 Personal Services	\$ 103,429.00
2 Current Expenses	61,900.00
3 Repairs and Alterations	10,500.00
4 Equipment	9,950.00
5 Vocational Training	5,000.00
6 Total	\$ 190,779.00

46—West Virginia State Prison for Women

Acct. No. 374

1 Personal Services	\$ 37,420.00
2 Current Expenses	31,600.00
3 Repairs and Alterations	12,600.00
4 Equipment	1,400.00
5 Total	\$ 83,020.00

47—West Virginia Penitentiary

Acct. No. 375

1 Personal Services	\$ 571,280.00
2 Current Expenses	477,700.00
3 Repairs and Alterations	34,000.00
4 Equipment	17,700.00
5 Total	\$ 1,100,680.00

48—*Medium Security Prison*

Acct. No. 376

1 Personal Services	\$	215,544.00
2 Current Expenses		150,804.00
3 Repairs and Alterations		20,000.00
4 Equipment		11,300.00
5 Total	\$	397,648.00

49—*West Virginia Children's Home*

Acct. No. 380

1 Personal Services	\$	42,195.00
2 Current Expenses		30,425.00
3 Repairs and Alterations		11,000.00
4 Equipment		5,850.00
5 Total	\$	89,470.00

50—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1 Personal Services	\$	175,920.00
2 Current Expenses		154,186.00
3 Repairs and Alterations		23,400.00
4 Equipment		8,275.00
5 Total	\$	361,781.00

HEALTH AND WELFARE

51—*State Health Department*

Acct. No. 400

1 Personal Services	\$	383,424.00
2 Current Expenses		50,060.00
3 Equipment		4,500.00
4 Cancer Control and Treatment		93,000.00
5 Tuberculosis Field Clinic and Nursing Service		10,000.00

6	Out-Patient Pneumothorax Treatment	20,000.00
7	Local Health Services	450,000.00
8	Total	\$ 1,010,984.00

52—Department of Veterans Affairs

Acct. No. 404

1	Personal Services	\$ 155,000.00
2	Current Expenses	43,000.00
3	Equipment	1,500.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	Chapter thirty-nine, Acts of the Legisla-	
7	ture, 1943	12,500.00
8	Total	\$ 212,000.00
9	Any unexpended balance remaining in the	
10	appropriation "To Provide Educational Op-	
11	portunities for Children of War Veterans"	
12	at the close of the fiscal year 1960-61 is	
13	hereby reappropriated for expenditure dur-	
14	ing the fiscal year 1961-62.	

53—Department of Welfare

Acct. No. 405

1	Personal Services	\$ 1,575,476.00
2	Current Expenses	250,858.00
3	Equipment	18,290.00
4	Public Assistance Grants (Classified Aid) ...	7,068,000.00
5	Aid to Crippled Children	300,000.00
6	Medical Services	785,000.00
7	Medical Aid to the Aged	1,325,256.00
8	Conservation of Vision and Prevention of	
9	Blindness	40,000.00
10	Child Welfare Services	113,000.00
11	General Relief	125,000.00
12	Boarding Care	340,000.00
13	Social Security Matching Fund	25,600.00
14	Total	\$ 11,966,480.00

54—*Department of Welfare—Commodity Distribution*

Acct. No. 406

1	Personal Services	\$	276,580.00
2	Current Expenses		107,420.00
3	Equipment		16,000.00
4	Total	\$	400,000.00

55—*Department of Mental Health*

Acct. No. 410

1	Personal Services	\$	210,369.00
2	Current Expenses		31,935.00
3	Equipment		2,400.00
4	Research and Training		25,000.00
5	Merit System Costs		33,000.00
6	Total	\$	302,704.00

56—*West Virginia Training School*

Acct. No. 419

1	Personal Services	\$	410,458.00
2	Current Expenses		149,650.00
3	Repairs and Alterations		35,500.00
4	Equipment		16,500.00
5	Total	\$	612,108.00

57—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$	1,334,583.00
2	Current Expenses		746,330.00
3	Repairs and Alterations		54,600.00
4	Equipment		30,580.00
5	Total	\$	2,166,093.00

58—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$	626,199.00
2	Current Expenses		376,755.00
3	Repairs and Alterations		49,600.00
4	Equipment		37,550.00
5	Total	\$	1,090,104.00

59—*Huntington State Hospital*

Acct. No. 422

1	Personal Services	\$	1,026,280.00
2	Current Expenses		538,665.00
3	Repairs and Alterations		54,175.00
4	Equipment		43,300.00
5	Total	\$	1,662,420.00

60—*Lakin State Hospital*

Acct. No. 423

1	Personal Services	\$	330,453.00
2	Current Expenses		193,120.00
3	Repairs and Alterations		36,975.00
4	Equipment		37,950.00
5	Total	\$	598,498.00

61—*Barboursville State Hospital*

Acct. No. 424

1	Personal Services	\$	285,368.00
2	Current Expenses		131,045.00
3	Repairs and Alterations		22,900.00
4	Equipment		6,150.00
5	Total	\$	445,463.00

62—Fairmont Emergency Hospital

Acct. No. 425

1 Personal Services	\$	106,880.00
2 Current Expenses		65,380.00
3 Repairs and Alterations		6,800.00
4 Equipment		5,500.00
5 Total	\$	184,560.00

63—Welch Emergency Hospital

Acct. No. 426

1 Personal Services	\$	135,320.00
2 Current Expenses		126,600.00
3 Repairs and Alterations		27,000.00
4 Equipment		17,000.00
5 Total	\$	305,920.00

64—Hopemont Sanitarium

Acct. No. 430

1 Personal Services	\$	389,940.00
2 Current Expenses		291,050.00
3 Repairs and Alterations		15,000.00
4 Equipment		10,900.00
5 Total	\$	706,890.00

65—Pinecrest Sanitarium

Acct. No. 431

1 Personal Services	\$	545,440.00
2 Current Expenses		462,940.00
3 Repairs and Alterations		26,500.00
4 Equipment		11,500.00
5 Total	\$	1,046,380.00

66—*Denmar State Hospital*

Acct. No. 432

1	Personal Services	\$	297,785.00
2	Current Expenses		132,325.00
3	Repairs and Alterations		10,000.00
4	Equipment		6,400.00
5	Total	\$	446,510.00

67—*Berkeley Springs Sanitarium*

Acct. No. 436

1	Personal Services	\$	27,800.00
2	Current Expenses		6,800.00
3	Repairs and Alterations		6,000.00
4	Equipment		1,600.00
5	Total	\$	42,200.00

68—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	\$	182,530.00
2	Current Expenses		34,432.00
3	Rehabilitation Center		103,929.00
4	Case Services		290,000.00
5	Supervisory Service for Vending Stand Pro-		
6	gram for the Blind		16,658.00
7	Training and Special Projects		20,000.00
8	Social Security		16,000.00
9	Total	\$	663,549.00

BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 450

1	Personal Services	\$	223,710.00
2	Current Expenses		69,090.00
3	Equipment		5,000.00
4	Total	\$	297,800.00

70—*Department of Mines*

Acct. No. 460

1	Personal Services	\$	661,500.00
2	Current Expenses		142,500.00
3	Equipment		31,000.00
4	Total	\$	835,000.00

71—*Department of Commerce*

Acct. No. 465

1	Expenses	\$	500,000.00
2	Industrial Development Loans		2,000,000.00
3	Total	\$	2,500,000.00
4	The above to be used in accordance with		
5	Com. Sub. for Senate Bill No. 39 and Senate		
6	Bill No. 40—1961 Legislature.		

72—*Commission on Interstate Cooperation*

Acct. No. 472

1	Total	\$	10,000.00
2	Out of the above appropriation the sum of		
3	\$7,500.00 may be made available for West		
4	Virginia's membership in The Council of		
5	State Governments.		

73—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac River		
2	Basin Interstate Commission	\$	3,600.00

74—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio River		
2	Valley Water Sanitation Commission	\$	15,860.00

75—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's Contribution to Southern		
2	Regional Education Board	\$	52,000.00
3	To be expended upon requisition of the Gov-		
4	ernor.		

76—*Department of Banking*

Acct. No. 480

1	Personal Services	\$	71,600.00
2	Current Expenses		27,980.00
3	Equipment		1,000.00
4	Total	\$	100,580.00

77—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services	\$	11,300.00
2	Current Expenses		5,710.00
3	Equipment		15,000.00
4	Aerial Markers		1,000.00
5	Civil Air Patrol Expense		7,500.00
6	Total	\$	40,510.00

78—*West Virginia Centennial Commission*

Acct. No. 487

1	Expenses for planning 1963 Centennial cele-		
2	bration	\$	12,550.00
3	To be transferred to "West Virginia Centen-		
4	nial Fund" provided by House Bill No. 57		
5	(1959 Legislature)		100,000.00
6	Total	\$	112,550.00

79—*West Virginia Non-Intoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services	\$	81,650.00
2	Current Expenses		41,500.00

3	Equipment	800.00
4	Total	\$ 123,950.00

80—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 63,000.00
2	Current Expenses	13,550.00
3	Total	\$ 76,550.00

AGRICULTURE

81—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$ 11,000.00
2	Other Personal Services	159,479.00
3	Current Expenses	66,070.00
4	Equipment	8,000.00
5	Eradication and Control of White Pine Blister	15,725.00
6	Eradication and Prevention of Livestock Dis-	
7	eases	166,453.00
8	Eradication and Control of Japanese beetle	
9	and other plant pests	15,450.00
10	Aid to Dairy Development Program	59,588.00
11	Eradication and Control of Oak Wilt	67,930.00
12	Total	\$ 569,695.00
13	The appropriation eradication and control of	
14	Oak Wilt may be transferred to Special	
15	Revenue Fund for the purpose of matching	
16	Federal Funds.	

82—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

1	Personal Services	\$ 60,000.00
2	Current Expenses	30,000.00
3	Total	\$ 90,000.00

83—*Department of Agriculture—Marketing and Research*

Acct. No. 513

1	For cooperation with the Federal Government	
2	in a program of marketing and research	\$ 100,000.00
3	Any part or all of this appropriation may be	
4	transferred to Special Revenue Fund for the	
5	purpose of matching federal funds for the	
6	above named program.	

84—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	West Virginia State Fair	\$ 25,000.00
2	Agricultural Centennial	15,000.00
3	Walnut Festival	3,500.00
4	Agricultural Awards	40,000.00
5	Mountain State Forest Festival	15,000.00
6	Total	\$ 98,500.00
7	To be expended at the discretion of the Com-	
8	missioner of Agriculture in accordance with	
9	law.	

CONSERVATION AND DEVELOPMENT

85—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services	\$ 107,170.00
2	Current Expenses	30,080.00
3	Equipment	14,650.00
4	Cooperative Mapping Program	60,000.00
5	Total	\$ 211,900.00
6	Of the above appropriation for Current Ex-	
7	penses, the sum of \$15,000.00 may be used	
8	to cooperate with the United States Geolog-	
9	ical Survey in Ground Waters Resources	
10	Study.	
11	Of the above appropriation for Cooperative	
12	mapping program the sum of \$10,000.00	

- 13 may be used for preparation of accurate
14 geographic and political maps of West Vir-
15 ginia.

86—*Natural Resources Commission*

Acct. No. 521

- 1 Any unexpended balance remaining in the
2 1959-60 appropriation "For construction of
3 forest tree nursery facilities at McClintic
4 Wildlife Station" at the close of the fiscal
5 year 1959-60 and reappropriated for the fis-
6 cal year 1960-61; and any balance remain-
7 ing in the 1960-61 appropriation "For con-
8 struction of forest tree nursery facilities"
9 at the close of the fiscal year 1960-61 is
10 hereby reappropriated for expenditure dur-
11 ing the fiscal year 1961-62, and may be ex-
12 pended only in accordance with the fol-
13 lowing provisions: None of the funds here-
14 in appropriated shall be used for purchase
15 of land. Expenditures shall be limited to
16 construction of nursery facilities on pres-
17 ently owned state land which may be
18 available for the purpose and only upon
19 approval of the Board of Public Works as
20 to the site and availability of such site.

87—*Natural Resources Commission—*

Division of State Parks

Acct. No. 522

1	Personal Services	\$	261,215.00
2	Current Expenses		156,775.00
3	Repairs and Alterations		316,950.00
4	Equipment		176,000.00
5	Total	\$	910,940.00
6	To be used in accordance with Senate Bill		
7	No. 23 and House Concurrent Resolution		
8	No. 17—1961 Legislature.		

88—*Natural Resources Commission—Clarke-McNary*

Acct. No. 523

1	For cooperation with the United States De-	
2	partment of Agriculture in Fire Preven-	
3	tion and Control	\$ 75,000.00
4	Any unexpended balance remaining in this	
5	account at the close of the fiscal year 1960-	
6	61 is hereby reappropriated for expendi-	
7	ture during the fiscal year 1961-62.	
8	To be used in accordance with Senate Bill	
9	No. 23—1961 Legislature.	

89—*Natural Resources Commission—
Historical Monuments and Parks*

Acct. No. 561

1	Care and maintenance of:	
2	Point Pleasant Battle Monument and Park \$	4,500.00
3	Rumsey Monument and Park	900.00
4	Morgan Morgan Memorial	200.00
5	Fairfax Stone	300.00
6	Booker T. Washington Park	300.00
7	Cathedral Park	2,100.00
8	Pinnacle Rock Park	1,600.00
9	Commemorate first Land Battle of the Civil	
10	War	5,000.00
11	Total	\$ 14,900.00
12	To be used in accordance with Senate Bill	
13	No. 23—1961 Legislature.	

90—*Department of Veterans Affairs*

Acct. No. 564

1	In aid of Veterans Day Patriotic Exercises ...\$	2,000.00
2	To be expended subject to the approval of the	
3	Department of Veterans Affairs upon pres-	
4	entation of satisfactory plans by the Grafton	
5	G.A.R. Post, American Legion, Veterans of	
6	Foreign Wars and Sons of Veterans.	

91—*Natural Resources Commission*

Acct. No. 565

1	Water Resources Division	\$	122,245.00
2	Forestry Division		531,100.00
3	Public Land Corporation		14,184.00
4	Total	\$	667,529.00
5	To be used in accordance with Senate Bill No.		
6	23—1961 Legislature.		

PROTECTION

92—*Department of Public Safety*

Acct. No. 570

1	Personal Services	\$	1,359,620.00
2	Current Expenses		656,635.00
3	Repairs and Alterations		21,960.00
4	Equipment		112,500.00
5	Total	\$	2,150,715.00

93—*Adjutant General—State Militia*

Acct. No. 580

1	Personal Services	\$	47,768.00
2	Current Expenses		125,800.00
3	Repairs and Alterations		7,200.00
4	Equipment		6,300.00
5	Compensation of Commanding Officers, Cleri-		
6	cal Allowances and Uniform Allowances		71,720.00
7	Property Maintenance		36,250.00
8	State Armory Board		298,564.00
9	Total	\$	593,602.00

94—*Department of Civil and Defense Mobilization*

Acct. No. 581

1	Personal Services	\$	35,340.00
2	Current Expenses		11,045.00
3	Equipment		4,300.00
4	Total	\$	50,685.00

95—Auditor's Office—Social Security

Acct. No. 582

1	To match contributions of state employees		
2	for social security	\$	830,000.00
3	The above appropriation is intended to		
4	cover the State's share of social security		
5	costs for those spending units operating		
6	from General Revenue Fund and General		
7	School Fund appropriations. The State		
8	Road Commission, Department of Motor		
9	Vehicles, Workmen's Compensation Com-		
10	mission, Public Service Commission, and		
11	other departments operating from Special		
12	Revenue Funds and/or Federal Funds		
13	shall pay their proportionate share of the		
14	social security cost for their respective di-		
15	visions.		

96—Department of Mental Health—Insurance

Acct. No. 583

1	Fire Insurance Premiums	\$	70,900.00
2	To pay fire insurance covering Department		
3	of Mental Health and six mental hospitals.		

97—State Board of Education—Insurance

Acct. No. 584

1	Fire Insurance Premiums	\$	74,500.00
2	To insure contents of buildings		6,821.00
3	To insure contents of non-revenue producing		
4	buildings. Fifth annual installment due on		
5	a policy covering a five-year period ending		
6	July 1, 1962.		
7	Total	\$	81,321.00

98—Commissioner of Public Institutions—Insurance

Acct. No. 585

1	Fire Insurance Premiums	\$	76,500.00
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99—*West Virginia Board of Accountancy*

Acct. No. 586

1 To pay the per diem of members and other	
2 general expenses	\$ 15,000.00
3 <i>From Collections</i>	15,000.00

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

Acct. No. 587

1 To pay the per diem of members and other	
2 general expenses	\$ 14,000.00
3 <i>From Collections</i>	14,000.00

101—*State Board of Examiners for Registered Nurses*

Acct. No. 588

1 To pay the per diem of members and other	
2 general expenses	\$ 32,000.00
3 <i>From Collections</i>	32,000.00

102—*State Board of Dental Examiners*

Acct. No. 589

1 To pay the per diem of members and other	
2 general expenses	\$ 5,500.00
3 <i>From Collections</i>	5,500.00

103—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other	
2 general expenses	\$ 10,500.00
3 <i>From Collections</i>	10,500.00

104—*State Board of Osteopathy*

Acct. No. 591

1 To pay the per diem of members and other	
2 general expenses	\$ 1,500.00
3 <i>From Collections</i>	1,500.00

105—*State Board of Optometry*

Acct. No. 592

1 To pay the per diem of members and other		
2 general expenses	\$	2,500.00
3 From Collections		2,500.00

106—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses	\$	10,000.00
3 From Collections		10,000.00

107—*State Board of Registration for Professional Engineers*

Acct. No. 594

1 To pay the per diem of members and other		
2 general expenses	\$	20,000.00
3 From Collections		20,000.00

108—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses	\$	4,000.00
3 From Collections		4,000.00

109—*State Veterinary Board*

Acct. No. 596

1 To pay the per diem of members and other		
2 general expenses	\$	500.00
3 From Collections		500.00

110—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 general expenses	\$	2,400.00

111—*Human Rights Commission*

Acct. No. 598

1	Personal Services	\$	10,000.00
2	Current Expenses		3,500.00
3	Equipment		2,000.00
4	Total	\$	15,500.00
5	To be used in accordance with Com. Sub. for		
6	Eng. House Bill No. 115, 1961 Legislature.		

112—*West Virginia State Board of Sanitarians*

Acct. No. 599

1	To pay the per diem of members and other		
2	general expenses	\$	600.00
3	From Collections		600.00

113—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1	Employers Contribution	\$	650,000.00
2	The above appropriation is intended to cover		
3	the State's share of the West Virginia Pub-		
4	lic Employees' Retirement cost in accord-		
5	ance with Senate Bill No. 22, (1961 Legis-		
6	lature) for those departments operating		
7	from General Revenue Fund and General		
8	School Fund appropriations. The State		
9	Road Commission, Department of Motor		
10	Vehicles, State Tax Commissioner, Gaso-		
11	line Tax Division, Workmen's Compensa-		
12	tion Commission, Public Service Commis-		
13	sion, and other departments operating from		
14	Special Revenue Funds and/or Federal		
15	Funds shall pay their proportionate share		
16	of the retirement costs for their respective		
17	divisions. Such payments may be made		
18	from the balances in the various Special		
19	Revenue Funds in excess of specific appro-		
20	priations.		

114—*State Road Commission*

Acct. No. 641

1 Total\$ 6,345,000.00

2 The purpose of the above appropriation is to
3 aid in payment of interest and principal on
4 outstanding road bonds and may be trans-
5 ferred to the state road fund upon the
6 requisition of the Governor.

Sec. 2. *Appropriations from Other Funds.*—From the
2 funds designated there is hereby appropriated conditionally
3 upon the fulfillment of the provisions set forth in chapter
4 thirty-nine, acts of the Legislature, regular session, one
5 thousand nine hundred thirty-nine, the following amounts,
6 as itemized, for expenditure during the fiscal year one thou-
7 sand nine hundred sixty-two.

115—*State Road Commission—General Administration
and Engineering*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$ 425,000.00
2 Current Expenses	90,000.00
3 Equipment	8,000.00
4 Total	\$ 523,000.00

5 In addition to the foregoing appropriations
6 and claims as authorized by this act or by
7 law to be paid from the state road fund, the
8 balance or residue of the annual receipts of
9 the state road fund is hereby appropriated
10 first for the payment of interest on and prin-
11 cipal of outstanding road bonds, and there-
12 after for maintenance, construction and re-
13 construction of state roads, in accordance
14 with the provisions of chapter seventeen,
15 code of West Virginia, 1931, as amended.

116—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	565,840.00
2	Current Expenses		264,625.00
3	Equipment		100,000.00
4	Purchase of License Plates		207,000.00
5	Social Security Matching Fund		16,500.00
6	Total	\$	1,153,965.00

117—*State Tax Commissioner—Gasoline Tax
Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	108,500.00
2	Current Expenses		29,685.00
3	Equipment		5,000.00
4	Social Security Matching Fund		3,255.00
5	Total	\$	146,440.00

118—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	35,360.00
2	Current Expenses		11,905.00
3	Equipment		800.00
4	Total	\$	48,065.00

119—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	32,510.00
2	Current Expenses		7,000.00

3	Equipment	2,900.00
4	Vocational Aid	350,000.00
5	Total	\$ 392,410.00

120—Department of Education—Veterans Education

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 41,760.00
2	Current Expenses	13,187.00
3	Total	\$ 54,947.00

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

7 Federal funds in excess of the amounts here-
 8 by appropriated may be made available
 9 by budget amendment upon request of the
 10 State Superintendent of Schools and ap-
 11 proval of the Board of Public Works for
 12 any emergency which might arise in the
 13 operation of this division during the fiscal
 14 year.

121—Department of Education

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$ 12,000.00
2	Other Personal Services	244,240.00
3	Current Expenses	79,292.00
4	Equipment	5,000.00
5	National Defense Education Act	140,000.00
6	Total	\$ 480,532.00

7 Any part or all of the appropriation for "Na-
 8 tional Defense Education Act" may be
 9 transferred to a Special Revenue Fund for
 10 the purpose of matching Federal Funds for
 11 this program.

122—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	17,750.00
2	Current Expenses		3,310.00
3	Total	\$	21,060.00

123—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	51,720.00
2	Current Expenses		13,250.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		150,000.00
5	Total	\$	214,970.00

124—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents	\$	61,300.00
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125—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Homes	\$	25,000.00
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126—*State Tax Commissioner—
Store and General Licenses Division*

Acct. No. 712

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	36,800.00
2	Current Expenses		2,000.00
3	Equipment		1,000.00
4	Total	\$	39,800.00

127—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

1	Scholarships for Teacher Training	\$ 200,000.00
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128—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 20,450.00
2	Current Expenses	14,500.00
3	Equipment	2,000.00
4	Social Security Matching Fund	510.00
5	Total	\$ 37,460.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 collections of license fees as provided by
 9 law.

129—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$ 5,000.00
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2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out
 4 of collections of license fees and fines as
 5 provided by law.
 6 No expenditures shall be made from this
 7 account except for hospitalization, medical
 8 care, and/or funeral expenses for persons
 9 contributing to this fund.

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

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses	\$ 15,000.00
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2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out of
 4 fees and collections as provided by law.

131—*Department of Finance and Administration*
Division of Purchases—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	71,860.00
2	Current Expenses		15,330.00
3	Equipment		5,000.00
4	Social Security Matching Fund		2,155.00
5	Total	\$	94,345.00
6	The total amount of this appropriation shall		
7	be paid from Special Revenue Fund as pro-		
8	vided by Chapter 25-A, Article 2, Code of		
9	West Virginia.		
10	The above appropriation includes salaries		
11	and operating expenses.		
12	There is hereby appropriated from this fund,		
13	in addition to the above appropriation,		
14	the necessary amount for the purchase of		
15	supplies for resale.		

132—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	135,600.00
2	Current Expenses		40,700.00
3	Equipment		8,000.00
4	Social Security Matching Fund		3,500.00
5	Total	\$	187,800.00
6	The total amount of this appropriation shall		
7	be paid from Special Revenue Fund out of		
8	collections made by the Department of		
9	Agriculture as provided by law. It is the		
10	intention that special funds in excess of the		
11	amounts hereby appropriated shall be made		
12	available by budget amendments upon re-		
13	quest of the Commissioner of Agriculture.		

133—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	29,220.00
2	Current Expenses		17,650.00
3	Social Security Matching Fund		800.00

4	Total	\$	47,670.00
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5 The total amount of this appropriation shall
 6 be paid from Special Revenue Fund out of
 7 collections made by the State Committee
 8 of Barbers and Beauticians as provided by
 9 law.

134—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	98,240.00
2	Current Expenses		12,930.00
3	Equipment		1,000.00
4	Social Security Matching Fund		2,950.00

5	Total	\$	115,120.00
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6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 collections for license and report fees as
 9 provided by law.

135—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	84,100.00
2	Current Expenses		30,344.00
3	Equipment		5,800.00
4	Building Repair and Maintenance		2,600.00
5	Social Security Matching Fund		2,525.00

6	Total	\$	125,369.00
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7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 collections of the special tax of one-half of
 10 one per cent of premium receipts of fire
 11 insurance companies as provided by law.

136—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	24,000.00
2	Other Personal Services		366,475.00
3	Current Expenses		45,000.00
4	Equipment		6,650.00
5	Social Security Matching Fund		7,875.00
6	Total	\$	450,000.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 collections for special license fees from
 10 public service corporations as provided by
 11 law. Out of the above appropriation
 12 \$5,000.00 may be transferred to the State
 13 Water Resources Commission for use in co-
 14 operation with the U. S. Geological Survey
 15 in a program of stream gauging.

137—*Public Service Commission—Motor Carrier
 Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	151,400.00
2	Current Expenses		40,300.00
3	Equipment		4,600.00
4	Social Security Matching Fund		4,000.00
5	Total	\$	200,300.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 receipts collected for or by the Public Serv-

9 ice Commission pursuant to and in the
 10 exercise of regulatory authority over motor
 11 carriers as authorized by law.

138—*Natural Resources Commission*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Administration	\$	798,920.00
2 Game and Fish Division		1,193,180.00
3 Land Purchase		75,000.00

4 Total	\$	2,067,100.00
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5 To be used in accordance with Senate Bill No.
 6 23—1961 Legislature.

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 fees collected by the Natural Resources
 10 Commission. Expenditures shall be limited
 11 to the amounts appropriated except for
 12 Federal Funds received and Special Funds
 13 collected at state parks. Special Funds in
 14 excess of the amounts hereby appropriated
 15 may be made available by budget amend-
 16 ment upon request of the Natural Re-
 17 sources Commission and approval of The
 18 Board of Public Works for any emergency
 19 which might arise in the operation of this
 20 Division during the fiscal year.

139—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	96,000.00
2 Current Expenses		67,142.00
3 Repairs and Alterations		7,100.00
4 Equipment		18,000.00
5 Social Security Matching Fund		430.00

6 Total	\$	188,672.00
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7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 fees collected for inspection stickers as pro-
10 vided by law.

11 Special Funds in excess of the amounts
12 hereby appropriated may be made available
13 by budget amendment upon request of the
14 Department of Public Safety and approval
15 of the Board of Public Works for the pur-
16 pose of repairs to, or construction of police
17 barracks, not to exceed one hundred thou-
18 sand dollars in any one fiscal year.

140—*West Virginia Liquor Control Commissioner*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1 Salary of Commissioner	\$ 10,000.00
2 Other Personal Services	2,671,580.00
3 Current Expenses	780,150.00
4 Repairs and Alterations	31,200.00
5 Equipment	57,500.00
6 Social Security Matching Fund	80,000.00

7 Total

	\$ 3,630,430.00
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8 The total amount of this appropriation shall
9 be paid from Special Revenue Fund out of
10 liquor revenues.

11 The above appropriation includes the salaries
12 of store personnel, store inspectors, store
13 operating expenses and equipment; and sal-
14 aries, expenses and equipment of adminis-
15 tration offices.

16 There is hereby appropriated from liquor
17 revenues, in addition to the above appro-
18 priation, the necessary amount for the pur-
19 chase of liquor, as provided by law.

141—*West Virginia Merit System Council*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	63,680.00
2	Current Expenses		16,390.00
3	Social Security Matching Fund		1,650.00
4	Total	\$	81,720.00

5 The total amount of this appropriation shall
 6 be paid from Special Revenue Fund sup-
 7 ported by participating agencies as pro-
 8 vided by law.

9 The Board of Public Works is hereby au-
 10 thorized to make available by budget
 11 amendment, upon request of the Merit
 12 System Council, funds in excess of the
 13 amounts hereby appropriated that may
 14 become available as a result of Acts of
 15 the Legislature—1961 Session.

142—*Department of Labor—Bedding Division*

Acct. No. 843

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	7,980.00
2	Current Expenses		4,550.00
3	Social Security Matching Fund		390.00
4	Total	\$	12,920.00

5 The total amount of this appropriation shall
 6 be paid from Special Revenue Fund out of
 7 fees, fines and penalties as provided by
 8 law.

143—*West Virginia University—Special Capital
Improvement Fund*

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1	Forestry Building	\$	571,250.00
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2 The total amount of this appropriation shall
 3 be paid from the non-revolving Capital Im-
 4 provement Fund created by the 1959 Legis-
 5 lature.

6 Any unexpended balance remaining in this
 7 appropriation at the close of the fiscal
 8 year 1960-61 is hereby reappropriated for
 9 expenditure during the fiscal year 1961-62.

144—*State Board of Education—Special Capital
 Improvement Fund*

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 Addition to Dining Hall at Shepherd Col-		
2 lege	\$	150,000.00
3 Renovation of Administration Building at		
4 Concord College		550,000.00
5 Renovation of Administration Building at		
6 Glenville State College		300,000.00
7 Total	\$	1,000,000.00

8 The total amount of this appropriation shall
 9 be paid from the non-revolving Capital Im-
 10 provement Fund created by the 1959 Legis-
 11 lature.

12 Any unexpended balance remaining in this
 13 appropriation at the close of the fiscal year
 14 1960-61 is hereby reappropriated for ex-
 15 penditure during the fiscal year 1961-62.

145—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Personal Services	\$	605,900.00
2 Current Expenses		245,000.00
3 Equipment		10,100.00
4 Social Security Matching Fund		18,000.00
5 Total	\$	879,000.00

6 There is hereby authorized to be paid out of
 7 the above appropriation for Current Ex-
 8 penses the amount necessary for the premi-
 9 ums on bonds given by the State Treasurer
 10 and bond custodian for the protection of the
 11 Workmen's Compensation Fund.

Sec. 3. *Supplemental and Deficiency Appropriations.—*

2 From the State Fund, General Revenue, except as otherwise
 3 provided, there are hereby appropriated the following
 4 amounts, as itemized, for expenditure during the fiscal year
 5 one thousand nine hundred sixty-one to supplement the
 6 1960-61 appropriations, and to be available for expenditure
 7 upon date of passage.

146—*Auditor's Office*

Acct. No. 150

1 Current Expenses	\$	1,031.00
2 Equipment		25,000.00
3 Social Security Matching Fund		132,786.00
4 Total	\$	158,817.00
5 Any unexpended balance remaining in the		
6 appropriation "Equipment" at the close of		
7 the fiscal year 1960-61 is hereby reappro-		
8 priated for expenditure during the fiscal		
9 year 1961-62.		

147—*State Tax Commissioner*

Acct. No. 180

1 Administration, Enforcement and Collection		
2 under the West Virginia Personal Income		
3 Tax Law. (Senate Bill 106, 1961 Legisla-		
4 ture)	\$	250,000.00
5 Any unexpended balance remaining in the		
6 appropriation at the close of the fiscal		
7 year 1960-61 is hereby reappropriated for		
8 expenditure during the fiscal year 1961-62.		

148—*Secretary of State*

Acct. No. 250

1	Equipment	\$	7,701.38
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149—*Marshall University*

Acct. No. 320

1	Personal Services	\$	7,272.00
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2	Current Expenses		6,000.00
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3	Total	\$	13,272.00
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150—*West Virginia Library Commission*

Acct. No. 350

1	Library Services for the Blind	\$	5,000.00
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151—*Forestry Camp for Boys*

Acct. No. 371

1	Current Expenses	\$	6,000.00
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152—*West Virginia Penitentiary*

Acct. No. 375

1	Current Expenses	\$	75,000.00
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153—*Department of Welfare*

Acct. No. 405

1	Personal Services	\$	60,000.00
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2	Current Expenses		22,000.00
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3	Equipment		3,000.00
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4	Public Assistance Grants		262,000.00
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5	Total	\$	347,000.00
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154—*Department of Welfare—Commodity Distribution*

Acct. No. 406

1	Personal Services	\$	9,400.00
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2	Current Expenses		24,140.00
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3	Equipment		19,100.00
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4	Total	\$	52,640.00
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155—*Natural Resources Commission—Clarke-McNary*

Acct. No. 523

1	For cooperation with the United States De-	
2	partment of Agriculture in Fire Prevention	
3	and Control	\$ 50,000.00
4	Any unexpended balance remaining in this	
5	account at the close of the fiscal year 1960-	
6	61 is hereby reappropriated for expendi-	
7	ture during the fiscal year 1961-62.	

156—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 12,000.00
2	Current Expenses	23,000.00
3	Equipment	4,500.00
4	Total	\$ 39,500.00

157—*Public Land Corporation*

Acct. No. 802

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 6,020.00
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158—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Current Expenses	\$ 8,500.00
2	Equipment	5,000.00
3	Total	\$ 13,500.00

Sec. 4. *Awards for Claims Against the State.*

- 2 —From the funds designated there are
 3 hereby appropriated for the fiscal year
 4 1961-62, for payment of claims against the
 5 state, the following amounts, as itemized:

Claims versus the Adjutant General

TO BE PAID FROM GENERAL REVENUE FUND

1	P. Marcum	\$	150.14
2	Betsy Ross Bakeries, Inc.		239.80
3	Paul E. Myers		211.76
4	W. B. Phillips		2,252.98

Claims versus Department of Agriculture

TO BE PAID FROM GENERAL REVENUE FUND

1	G. C. Houser, dba Houser's Hatchery	\$	740.25
2	R. N. Hewitt Corporation		4,362.12

Claims versus Department of Mental Health

TO BE PAID FROM GENERAL REVENUE FUND

1	Glenn C. Hancock	\$	8,525.48
2	Denton Hall		308.88

Claims versus Treasurer

TO BE PAID FROM GENERAL REVENUE FUND

1	Guaranty National Bank of Huntington	\$	1,136.62
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Claims versus Department of Welfare

TO BE PAID FROM GENERAL REVENUE FUND

1	Margaret G. Lippert	\$	2,035.75
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Claims versus Department of Public Safety

TO BE PAID FROM GENERAL REVENUE FUND

1	Memorial General Hospital and Golden		
2	Clinic	\$	674.80
3	Jack Nelson Morrison and Harry Lyons		8,505.10
4	Burford L. Snyder		1,569.27

Claims versus Vocational Rehabilitation

TO BE PAID FROM GENERAL REVENUE FUND

1	The Pullman Company	\$	11.90
2	St. Joseph's Hospital		676.00
3	St. Mary's Hospital, Huntington, West Vir-		
4	ginia		126.00

Claims versus State Road Commission

TO BE PAID FROM STATE ROAD FUND

1 Criss Pauley	\$	3,095.35
2 Perdue Transfer and Storage Co.		1,310.75
3 R. L. Baumgardner, et al.		2,902.03
4 Abernethy, dba Abernethy Buick		230.00
5 Construction Equipment Co.		572.82
6 Stanley Cosner and Susan M., his wife		795.00
7 Alice Hartman		1,105.00
8 Nathan Allen		375.00
9 Curtis E. Mullins		1,000.00
10 John Falbo		2,500.00

Claims versus State Board of Education

TO BE PAID FROM GENERAL SCHOOL FUND

1 Medora Mason Wolfe	\$	2,800.00
2 Potomac Construction Company		1,807.00

Sec. 5. *Appropriations from Surplus Revenues.*—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditure only out of the surplus in the treasury on or after the first day of July, 1961, subject to the conditions and limitations hereinafter expressed.

(b) Expenditures authorized, which are for construction purposes, shall be for a complete and usable unit or project including necessary equipment.

(c) The Board of Public Works shall review the revenues of the state from the first day of July, 1961, to the date that appropriations hereunder are expected to be made available for expenditure, and determine whether, in its opinion, revenues then in prospect or on hand will be sufficient to meet all appropriations under this and other sections of this budget bill, and make a finding with respect thereof. In the event that such finding shall show sufficient revenues on hand or in prospect to meet all other appropriations and reappropriations made by this act (Budget Bill), the Board of Public Works may, from any excess over and above the amount required to meet all appropriations contained in

23 the act, release the following items subject to the foregoing
24 conditions if available funds will permit:

25 Item 1: West Virginia Schools for the Deaf and Blind,
26 for construction of classroom building\$ 548,250.00

27 Item 2: Weston State Hospital for construction of Sewage
28 Disposal System\$ 80,000.00

29 Item 3: Lakin State Hospital for Auxiliary
30 Well\$ 8,000.00

Sec. 6. *Appropriations for Emergency Relief of Unem-*
2 *ployment.*—In addition to all other appropriations contained
3 in this bill, the following items are hereby appropriated
4 from the General Revenue Fund for the purpose of pro-
5 viding emergency relief of unemployment throughout the
6 state of West Virginia:

7 Item 1. State Road Commission, for works projects of
8 an improvement or maintenance nature relating to primary
9 and secondary roads, such as installation and extension of
10 drainage and drainage structures, development of roadside
11 parks, cleaning of streams along and of right-of-ways of
12 existing road system, and elimination of dangerous curves
13 and widening of primary and secondary roads..\$1,500,000.00

14 The appropriation to the state road commission may be
15 transferred to the state road fund upon the requisition of
16 the Governor.

17 Any unexpended balance remaining in the appropriation
18 as provided under section one, item 1, of Senate Bill No. 2,
19 regular session of the Legislature, 1961, for the fiscal year
20 1960-61 is hereby reappropriated for expenditure during
21 the 1961-62 fiscal year.

22 Item 2. Natural Resources Commission, for repairs,
23 maintenance, and improvement of Natural Resources Com-
24 mission facilities, such as state parks, state forests, state
25 game areas, lakes and streams\$ 750,000.00

26 Any unexpended balance remaining in the appropria-
27 tion (Conservation Commission) as provided under section
28 one, item II, of Senate Bill No. 2, regular session of the
29 Legislature, 1961, for the fiscal year 1960-61 is hereby re-
30 appropriated to the Natural Resources Commission for ex-
31 penditure during the 1961-62 fiscal year.

32 Item 3. Governor, for allocation and transfer in his dis-
33 cretion to those agencies and departments of state govern-
34 ment which satisfy the Governor that they can and will
35 expend requested sums in accordance with the purpose of
36 this supplementary appropriation\$ 750,000.00

37 Any unexpended balance remaining in the appropriation
38 as provided under section one, item III, of Senate Bill No.
39 2, regular session of the Legislature, 1961, for the fiscal year
40 1960-61 is hereby reappropriated for expenditure during the
41 1961-62 fiscal year.

Sec. 7. *Reappropriations.*—The date for expiring the un-
2 expended balances, if any, in items 1 and 2, in the appropria-
3 tions made by and under authority of Section 4 of the 1960
4 Budget Act is extended to June 30, 1962 and are hereby
5 reappropriated to June 30, 1962.

6 Item 2—as herein reappropriated may be used for coop-
7 eration with the Federal Government in a program of
8 Marketing and Research, Oak Wilt Control or Farm Market
9 Facilities.

10 The date for expiring the unexpended balances, if any, in
11 items 1, 2, 3, and 4, in the appropriations made by and under
12 authority of Section 4-A of the 1960 Budget Act is extended
13 to June 30, 1962 and are hereby reappropriated to June 30,
14 1962.

15 Under Item 1, Section 4-A, Conservation Commission, as
16 herein reappropriated, the sum of \$5,000.00 shall be made
17 available for construction of Princeton Tourist Information
18 Center.

19 The date for expiring the unexpended balances, if any,
20 in items First, Fourth, Fifth, Thirteenth, Twenty-First and
21 Twenty-Third in the appropriations made by and under
22 authority of Section 4 of the 1958 Budget Act and reappro-
23 priated under Section 4 of the 1959 Budget Act and re-
24 appropriated again under Section 5 of the 1960 Budget Act is
25 extended to June 30, 1962 and are hereby reappropriated
26 to June 30, 1962.

27 The date for expiring the unexpended balance, if any,
28 in item 23, under authority of Section 5 of the 1957 Budget
29 Act and reappropriated under Section 5 of the 1958 Budget

30 Act, and reappropriated under Section 4 of the 1959 Budget
31 Act, and reappropriated again under Section 5 of the 1960
32 Budget Act, is extended to June 30, 1962 and is hereby re-
33 appropriated to June 30, 1962.

34 Item Thirteenth, Conservation Commission, as herein
35 reappropriated, may be used for general improvement of the
36 Elk River Game Refuge.

Sec. 8. *Special Revenue Appropriations.*—There is hereby
2 appropriated for expenditure during the fiscal year one
3 thousand nine hundred sixty-two 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 section two, article two, chapter twelve of the code of West
7 Virginia, 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 articles
11 two and three, of chapter twelve, code of West Virginia
12 and chapter thirty-nine, acts of the Legislature, regular ses-
13 sion, one thousand nine hundred thirty-nine, and unless the
14 spending unit has filed with the state director of the budget
15 and the state auditor prior to the beginning of each fiscal
16 year:

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

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

Sec. 9. *Specific Funds and Collection Accounts.*—A fund
2 or collection account, which by law is dedicated to a specific
3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account, and
5 shall be expended according to the provisions of article
6 three, chapter twelve of the code of West Virginia, one
7 thousand nine hundred thirty-one.

Sec. 10. *Appropriations for Refunding Erroneous Pay-*
2 *ments.*—Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it
4 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 shall
7 issue his requisition upon the auditor for the refunding of
8 the proper amount. The auditor shall issue his warrant to
9 the treasurer and the treasurer shall pay the warrant out of
10 the fund into which the amount was originally paid.

Sec. 11. *Sinking Fund Deficiencies.*—There is hereby ap-
2 propriated to the board of public works a sufficient amount
3 to meet a deficiency that may arise in the funds of the state
4 sinking fund commission because of the failure of any state
5 agency for either general obligation or revenue bonds or any
6 local taxing district for general obligation bonds to remit
7 funds necessary for the payment of interest and sinking fund
8 requirements. The board of public works is authorized to
9 transfer from time to time such amounts to the state sinking
10 fund commission as may be necessary for this purpose.

11 The state sinking fund commission shall reimburse the
12 State of West Virginia through the board of public works
13 from the first remittance collected from any state agency
14 or local taxing district for which the board of public works
15 advanced funds, with interest at the rate carried by the
16 bonds for which the advance was made.

Sec. 12. *Appropriations from Taxes and License Fees.*—
2 There is hereby appropriated from the cigarette tax for ad-
3 ministration and enforcement of the law relating to said tax
4 a sum not to exceed one and one-half per cent of the tax
5 collected or stamps sold. There is hereby appropriated from
6 the soft drink tax revenues for administration and enforce-
7 ment of the law relating to said tax, a sum not to exceed
8 two and one-half per cent of the total revenues collected. All
9 such salaries and expenses, authorized by law as aforesaid,
10 shall be paid by the tax commissioner through the state
11 treasurer out of gross collections.

Sec. 13. *Appropriations to Pay Costs of Publication of*
2 *Delinquent Corporations.*—There is hereby appropriated out
3 of the state fund, general revenue, out of funds not other-
4 wise appropriated to be paid upon requisition of the auditor
5 and/or the governor, as the case may be, a sum sufficient to
6 pay the cost of publication of delinquent corporations as pro-

7 vided by sections seventy-five and seventy-seven of article
8 twelve, chapter eleven, code of West Virginia.

Sec. 14. *Appropriations for Local Governments.*—There
2 is hereby appropriated for payment to counties, districts,
3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due county, district, and municipal cor-
5 porations and which have been paid into the treasury:

- 6 (a) For the redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

Sec. 15. *Total Appropriations.*—Where only a total sum
2 is appropriated to a spending unit that total sum shall in-
3 clude personal services, current expenses, and capital out-
4 lay, except as otherwise provided in Title I, Section 3.

Sec. 16. *General School Fund.*—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropriated
4 for expenditure in accordance with section six, article nine,
5 chapter eighteen of the code of West Virginia, one thousand
6 nine hundred thirty-one, as amended.

Title 3. Administration.

Section

1. Appropriations conditional.
2. Constitutionality.

Section 1. *Appropriations Conditional.*—The expenditure
2 of the appropriations made by this act, except those appro-
3 priations made to the legislative and judicial branches of the
4 state government, are conditioned upon the compliance by
5 the spending unit with the requirements of article five, chap-
6 ter five, of the code of West Virginia, one thousand nine
7 hundred thirty-one; as amended by chapter thirty-nine, acts
8 of the Legislature, regular session, one thousand nine hun-
9 dred thirty-nine.

10 Where former spending units have been absorbed by or
11 combined with other spending units by acts of this legisla-
12 ture, it is the intent of this act that reappropriation shall
13 be to the succeeding or later spending unit created unless
14 otherwise indicated.

Sec. 2. *Constitutionality.*—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portions shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 9

(Senate Bill No. 2—By Mr. Carson, Mr. President)

(Passed January 13, 1961; in effect January 15, 1961. Approved by the Governor.)

AN ACT to make supplementary appropriations of public moneys out of the state treasury for the state road commission, the state conservation commission, and the governor to provide emergency relief of unemployment throughout the state of West Virginia, and to impose an additional consumers sales tax to provide revenues for such purpose.

Supplementary Appropriations

Section

1. Supplementary appropriation.
2. Imposition of additional consumers sales tax.
3. Purpose of this supplementary appropriation.

Be it enacted by the Legislature of West Virginia:

Section 1. *Supplementary Appropriation.*—That in addition and as a supplement to the appropriation made by chapter two, acts of the Legislature, regular session, one thousand nine hundred sixty, there is hereby appropriated from the state fund, general revenue, conditionally upon the fulfilment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, as amended, and of

9 this act the following supplemental sums of money for the
10 purposes hereinafter stated:

11 Item I. State Road Commission, for
12 works projects of an improvement or main-
13 tenance nature relating to primary and
14 secondary roads, such as installation and
15 extension of drainage and drainage struc-
16 tures, development of roadside parks,
17 cleaning of streams along and of right-of-
18 ways of existing road system, and elimina-
19 tion of dangerous curves and widening of
20 primary and secondary roads \$ 2,250,000.00

21 The appropriation to the state road commission may
22 be transferred to the state road fund upon the requisition
23 of the Governor.

24 Item II. Conservation Commission, for
25 repairs, maintenance, and improvement of
26 conservation commission facilities, such as
27 state parks, state forests, state game areas,
28 lakes and streams \$ 1,125,000.00

29 Item III. Governor, for allocation and
30 transfer in his discretion to those agencies
31 and departments of state government which
32 satisfy the Governor that they can and will
33 expend requested sums in accordance with
34 the purpose of this supplementary appro-
35 priation \$ 1,125,000.00

36 Whereas, Appropriations within chapter two, acts of
37 the Legislature, regular session, one thousand nine hun-
38 dred sixty, are based upon estimated consumers sales tax
39 receipts in the amount of thirty-one million five hundred
40 thousand dollars (\$31,500,000.00); and, whereas, this
41 supplementary appropriation is based on an additional
42 four million five hundred thousand dollars (\$4,500,000.00),
43 thereby totaling thirty-six million dollars (\$36,000,000.00);
44 therefore, in the event that actual receipts from con-
45 sumers sales tax (as imposed under sections three and
46 three-a of article fifteen, chapter eleven of the code of
47 West Virginia, one thousand nine hundred thirty-one)
48 are under said thirty-six million dollars (\$36,000,000.00);

49 and, further, if it becomes necessary for the board of
50 public works, pursuant to chapter five of the West Vir-
51 ginia code, to reduce appropriations, the board of public
52 works shall reduce expenditures, pursuant to this supple-
53 mentary appropriation bill, in an amount equal to the
54 aforesaid reduction below thirty-six million dollars
55 (\$36,000,000.00).

Sec. 2. *Imposition of Additional Consumers Sales Tax.*—

2 That, pursuant to article six, section fifty-one, subsection
3 C (2) of the state constitution, article fifteen, chapter
4 eleven of the code of West Virginia, one thousand nine
5 hundred thirty-one, as amended, be amended by adding
6 thereto a new section designated section three-a to pro-
7 vide as follows:

“Sec. 3-a. *Additional Consumers Sales Tax.*—For the
2 purpose of providing additional revenue for the state
3 general revenue fund and for the privilege of selling
4 tangible personal property and dispensing certain selected
5 services defined in section eight of article fifteen, chapter
6 eleven of the code, the vendor, in addition to the tax
7 imposed by section three of said article, shall collect from
8 the purchaser the tax provided by this section, and shall
9 pay the amount of such tax to the tax commissioner in
10 accordance with the provisions of said article.

11 “The amount of the tax shall be computed as follows:

12 “On each sale, the additional sum of one cent (\$.01) on
13 each one dollar (\$1.00) of monetary consideration, or frac-
14 tion thereof, in excess of one dollar (\$1.00).

15 “Except as otherwise provided in this section, all pro-
16 visions of article fifteen, chapter eleven of the code, re-
17 lating to the levy, imposition, payment, collection, re-
18 mission, and assessment of the consumers sales tax im-
19 posed by section three of said article shall be applicable
20 to the levy, imposition, payment, collection, remission,
21 and assessment of such additional tax.

22 “Notwithstanding the provisions of section thirty of
23 said article, all moneys received by the tax commissioner
24 from the additional tax imposed by this section shall be
25 paid by him into the state fund, general revenue, to be
26 expended in whatever manner provided by law.

27 "The provisions of this section shall expire June thirty,
28 one thousand nine hundred sixty-one."

Sec. 3. Purpose of This Supplementary Appropriation.

2 —It is the purpose of this supplementary appropriation
3 to provide emergency relief of unemployment throughout
4 the state of West Virginia and, to this end, employment
5 on projects covered by this appropriation shall be given
6 to unemployed persons who are not eligible to receive
7 unemployment benefits and who receive no aid from the
8 department of public assistance or other agencies.

— C —

CHAPTER 10

(House Bill No. 85—By Mr. Brotherton)

[Passed March 9, 1961: in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen, to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state tax commissioner and on persons, as defined herein, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

WHEREAS, The advertising, offering for sale, or sale of cigarettes below cost in the retail or wholesale trade with intent of injuring competitors or destroying or substantially lessening competition, is an unfair and deceptive business practice; and

WHEREAS, Such practices adversely affect the collection of taxes from the sale of cigarettes and license fees imposed on distributors, wholesalers, retailers and others engaged in the sale of cigarettes; and

WHEREAS, It is hereby declared to be the policy of this state

to promote the public welfare by prohibiting such sales, and it is the purpose of this bill to carry out that policy in the public interest; therefore,

Article 13. Cigarette Sales Act.

Section

1. Title.
2. Definitions.
3. Violations and penalties.
4. Sales from wholesaler to wholesaler, and to certain retailers.
5. Combination sales.
6. Exemptions.
7. Sales to meet competition.
8. Contracts in violation void.
9. Evidence to be considered as bearing on bona fides of cost.
10. Cigarettes purchased outside ordinary trade channels.
11. Cost survey.
12. Remedies.
13. Powers and duties of state tax commissioner; rules and regulations; suspension and revocation of license; reinstatement of license; review of commissioners determinations.
14. Provisions of article severable.
15. Repealing clause.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Title*.—This article shall be known, designated and cited as “The Cigarette Sales Act”.

Sec. 2. *Definitions*.—When used in this article, the following words and phrases shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

(1) “Person” shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) “Wholesaler” shall include any person who:

(a) Purchases cigarettes directly from the manufacturer; or

(b) Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to re-

16 tail dealers or to other persons for the purposes of resale
17 only; or

18 (c) Services retail outlets by the maintenance of an
19 established place of business for the purchase of ciga-
20 rettes, including, but not limited to, the maintenance of
21 warehousing facilities for the storage and distribution of
22 cigarettes.

23 Nothing contained herein shall prevent a person from
24 qualifying in different capacities as both a "wholesaler"
25 and "retailer" under the applicable provisions of this ar-
26 ticle.

27 (3) "Retailer" shall mean and include any person who
28 operates a store, stand, booth, concession or vending ma-
29 chine for the purpose of making sales of cigarettes at
30 retail.

31 (4) "Commissioner" shall mean the state tax commis-
32 sioner of the state of West Virginia and where the mean-
33 ing of the context so requires, all deputies and employees
34 duly authorized by him.

35 (5) "Cigarettes" shall mean any roll for smoking made
36 wholly or in part of tobacco, irrespective of size or shape
37 and whether or not such tobacco is flavored, adulterated
38 or mixed with any other ingredient, the wrapper or cover
39 of which is made of paper or any other substance or mate-
40 rial except tobacco.

41 (6) "Sale" shall mean any transfer for consideration,
42 exchange, barter, gift, offer for sale and distribution, in
43 any manner, or by any means whatsoever.

44 (7) "Sell at wholesale", "sale at wholesale" and
45 "wholesale sales" shall mean and include any bona fide
46 transfer of title to cigarettes for a valuable consideration,
47 made in the ordinary course of trade or in the usual con-
48 duct of the wholesaler's business, to a retailer for the
49 purpose of resale.

50 (8) "Sell at retail", "sale at retail" and "retail sales"
51 shall mean and include any transfer of title to cigarettes
52 for a valuable consideration, made in the ordinary course
53 of trade or usual conduct of the seller's business, to the
54 purchaser for consumption or use.

55 (9) "Basic cost of cigarettes" shall mean the invoice
56 cost of cigarettes to the retailer or wholesaler, as the
57 case may be, or the replacement cost of cigarettes to the

58 retailer or wholesaler, as the case may be in the quantity
59 last purchased, whichever is lower, less all trade dis-
60 counts, except the customary discounts for cash, to which
61 shall be added the full face value of any stamps which
62 may be required by the cigarette tax act of this state
63 and by ordinance of any municipality thereof, now in
64 effect or hereafter enacted, if not already included by the
65 manufacturer in his list price.

66 (10) (a) The term "cost to the wholesaler" shall mean
67 the "basic cost of cigarettes" to the wholesaler plus the
68 "cost of doing business by the wholesaler", as evidenced
69 by the standards and methods of accounting regularly
70 employed by him in his allocation of overhead costs and
71 expenses, paid or incurred, and must include, without
72 limitation, labor costs (including salaries of executives
73 and officers), rent, depreciation, selling costs, all types of
74 licenses, taxes, insurance, maintenance of equipment, de-
75 livery costs and advertising.

76 (b) In the absence of the filing with the commissioner
77 of satisfactory proof of a lesser or higher cost of doing
78 business by the wholesaler making the sale, the "cost of
79 doing business by the wholesaler" shall be presumed to
80 be two per centum of the "basic cost of cigarettes" to the
81 wholesaler, plus cartage to the retail outlet, if performed
82 or paid for by the wholesaler, which cartage cost, in the
83 absence of the filing with the commissioner of satisfactory
84 proof of a lesser or higher cost, shall be deemed to be
85 three fourths of one per centum of the "basic cost of
86 cigarettes" to the wholesaler.

87 (11) (a) The term "cost to the retailer" shall mean the
88 "basic cost of cigarettes" to the retailer plus the "cost of
89 doing business by the retailer", as evidenced by the stand-
90 ards and methods of accounting regularly employed by
91 him in his allocation of overhead costs and expenses, paid
92 or incurred, and must include, without limitation, labor
93 (including salaries of executives and officers), rent, de-
94 preciation, selling costs, maintenance of equipment, de-
95 livery costs, all types of licenses, taxes, insurance and
96 advertising: *Provided*, That any retailer who, in connec-
97 tion with the retailer's purchase, receives not only the
98 discounts ordinarily allowed upon purchases by a whole-
99 saler but also shall, in determining "costs to the retailer",

100 pursuant to this subsection, add the "cost of doing busi-
101 ness by the wholesaler", as defined in section two, sub-
102 paragraph ten of this section, to the "basic cost of ciga-
103 rettes" to said retailer, as well as the "cost of doing busi-
104 ness by the retailer".

105 (b) In the absence of the filing with the commissioner
106 of satisfactory proof of a lesser or higher cost of doing
107 business by the retailer making the sale, the "cost of doing
108 business by the retailer" shall be presumed to be eight
109 per centum of the "basic cost of cigarettes" to the retailer.

110 (c) In the absence of the filing with the commissioner
111 of satisfactory proof of a lesser or higher cost of doing
112 business, the "cost of doing business by the retailer", who,
113 in connection with the retailer's purchase, receives not
114 only the discounts ordinarily allowed upon purchases by
115 a retailer but also, in whole or in part, the discounts ordi-
116 narily allowed upon purchases by a wholesaler, shall be
117 presumed to be ten per centum of the sum of the "basic
118 cost of cigarettes" and the "cost of doing business by the
119 wholesaler".

120 (12) "Business day" shall mean any day other than
121 Sunday or a legal holiday.

Sec. 3. *Violations and Penalties.*—It shall be unlawful
2 and a violation of this article:

3 (a) For any retailer or wholesaler with intent to in-
4 jure competitors or destroy or substantially lessen com-
5 petition:

6 (1) To advertise, offer to sell, or sell, at retail or
7 wholesale, cigarettes at less than cost to such a retailer
8 or wholesaler, as the case may be.

9 (2) To offer a rebate in price, to give a rebate in price,
10 to offer a concession of any kind, or give a concession of
11 any kind or nature whatsoever in connection with the
12 sale of cigarettes, which, when the amount of such rebate
13 or value of such concession is deducted from the total
14 price at which the cigarettes are sold, would have the
15 result of reducing the price to less than cost to such
16 retailer or wholesaler.

17 (b) For any retailer:

18 (1) To induce or attempt to induce or to procure or
19 attempt to procure the purchase of cigarettes at a price

20 less than "cost to wholesaler" as defined in this article.

21 (2) To induce or attempt to induce or to procure or
22 attempt to procure any rebate or concession of any kind or
23 nature whatsoever in connection with the purchase of
24 cigarettes.

25 (c) Any retailer or wholesaler who violates the provi-
26 sions of this section shall be guilty of a misdemeanor and
27 shall be prosecuted and punished by a fine of not more
28 than five hundred dollars for each such offense. Any in-
29 dividual who as a director, officer, partner, member or
30 agent of any person violating the provisions of this article
31 assists or aids, directly or indirectly in such violation,
32 shall, equally with the person for whom he acts, be re-
33 sponsible therefor and subject to the punishment and
34 penalties set forth herein.

35 (d) Evidence of advertisement, offering to sell or sale
36 of cigarettes by any retailer, or wholesaler at less than cost
37 to him, or evidence of any offer of a rebate in price or the
38 giving of a rebate in price or an offer of a concession or
39 the giving of a concession of any kind or nature what-
40 soever in connection with the sale of cigarettes or the in-
41 ducing or attempt to induce or the procuring or the at-
42 tempt to procure the purchase of cigarettes at a price
43 less than cost to the wholesaler or the retailer shall be
44 prima facie evidence of intent to injure competitors and
45 to destroy or substantially lessen competition.

Sec. 4. *Sales from Wholesaler to Wholesaler, and to*
2 *Certain Retailers.*—When one wholesaler sells cigarettes to
3 any other wholesaler, the former shall not be required to
4 include in his selling price to the latter, "cost to the
5 wholesaler", as provided by section two, subparagraph ten
6 of this article, except that no such sale shall be made at a
7 price less than the "basic cost of cigarettes" as defined in
8 said section two, subparagraph nine of this article, but the
9 latter wholesaler upon resale to a retailer, shall be deemed
10 to be the wholesaler governed by the provisions of said
11 section two, subparagraph ten of this article.

Sec. 5. *Combination Sales.*—In all advertisements, offers
2 for sale or sales involving two or more items, at least
3 one of which items is cigarettes, at a combined price, and

4 in all advertisements, offers for sale or sales involving the
5 giving of any concession of any kind whatsoever (whether
6 it be coupons or otherwise), the retailer's or wholesaler's
7 selling price shall not be below the "cost to the retailer"
8 or the "cost to the wholesaler", respectively, of the cig-
9 arettes included in such transactions, and the invoice cost,
10 whether the same be paid by the retailer, the wholesaler
11 or any other person, of all articles, products, commodi-
12 ties and concessions included in such transactions, to
13 which invoice cost shall be added, the cost of doing busi-
14 ness in the case of the wholesaler and the retailer, re-
15 spectively, as such is defined in section two hereof.

Sec. 6. *Exemptions.*—The provisions of this article shall
2 not apply to sales at retail or sales at wholesale made
3 (a) as an isolated transaction and not in the usual course
4 of business; (b) where cigarettes are advertised, offered
5 for sale, or sold in bona fide clearance sales for the pur-
6 pose of discontinuing trade in such cigarettes and said
7 advertising, offer to sell, or sale shall state the reason
8 thereof and the quantity of such cigarettes advertised,
9 offered for sale, or to be sold; (c) where cigarettes are
10 advertised for sale, or sold as imperfect or damaged, and
11 said advertising, offer to sell, or sale shall state the rea-
12 son therefor and the quantity of such cigarettes adver-
13 tised, offered for sale, or to be sold; (d) where cigarettes
14 are sold upon the final liquidation of a business; or (e)
15 where cigarettes are advertised, offered for sale, or sold
16 by any fiduciary or other officer acting under the order or
17 direction of any court.

Sec. 7. *Sales to Meet Competition.*—(a) Any retailer
2 may advertise, offer to sell, or sell cigarettes at a price
3 made in good faith to meet the price of a competitor
4 who is selling the same article at cost to him as a re-
5 tailer as prescribed in this article. Any wholesaler may
6 advertise, offer to sell, or sell cigarettes at a price made
7 in good faith to meet the price of a competitor who is
8 rendering the same type of service and is selling the
9 same article at cost to him as a wholesaler as prescribed
10 in this article. The price of cigarettes advertised, offered
11 for sale, or sold under the exceptions specified in section
12 six shall not be considered the price of a competitor and

13 shall not be used as a basis for establishing prices below
14 cost, nor shall the price established at a bankrupt sale
15 be considered the price of a competitor within the pur-
16 view of this section.

17 (b) In the absence of proof of the "price of a com-
18 petitor" under this section, the "lowest cost to the re-
19 tailer", or the "lowest cost to the wholesaler", as the case
20 may be, determined by any "cost survey", made pursuant
21 to section eleven of this article, may be deemed the "price
22 of a competitor", within the meaning of this section.

Sec. 8. *Contracts in Violation Void.*—Any contract, ex-
2 press or implied, made by any person in violation of any
3 of the provisions of this article, is declared to be an illegal
4 and void contract and no recovery thereon shall be had.

Sec. 9. *Evidence to Be Considered as Bearing on Bona*
2 *Fides of Cost.*—(a) In determining "cost to the retailer"
3 and "cost to the wholesaler" the commissioner or a court
4 shall receive and consider as bearing on the bona fides
5 of such cost, evidence tending to show that any person
6 complained against under any of the provisions of this
7 article purchased cigarettes, with respect to the sale of
8 which complaint is made, at a fictitious price, or upon
9 terms, or in such a manner, or under such invoices, as
10 to conceal the true cost, discounts or terms of purchase,
11 and shall also receive and consider as bearing on the bona
12 fides of such cost, evidence of the normal, customary and
13 prevailing terms and discounts in connection with other
14 sales of a similar nature in the trade area or state.

15 (b) Merchandise given gratis or payment made to a
16 retailer or wholesaler by the manufacturer thereof for
17 display, or advertising, or promotion purposes, or other-
18 wise, shall not be considered in determining the cost of
19 cigarettes to the retailer or wholesaler.

Sec. 10. *Cigarettes Purchased Outside Ordinary Trade*
2 *Channels.*—In establishing the cost of cigarettes to the
3 retailer or wholesaler, the invoice cost of said cigarettes
4 purchased at a forced, bankrupt, or closeout sale, or other
5 sale outside of the ordinary channels of trade, may not be
6 used as a basis for justifying a price lower than one based
7 upon the replacement cost of the cigarettes to the re-

8 tailer or wholesaler in the quantity last purchased, through
9 the ordinary channels of trade.

Sec. 11. *Cost Survey*.—Where a cost survey, pursuant
2 to recognized statistical and cost accounting practices, has
3 been made for the trading area in which the offense is
4 committed, to establish the lowest “cost to the retailer”
5 and the lowest “cost to the wholesaler”, said cost survey
6 shall be deemed competent evidence to be used in prov-
7 ing the cost to the person complained against within the
8 provisions of this article.

Sec. 12. *Remedies*.—(a) In addition to penalties pro-
2 vided by section three of this article, any person injured
3 by any violation of this article, or any trade association
4 which is representative of such a person, may maintain
5 an action in any court of equitable jurisdiction to prevent,
6 restrain or enjoin such violation. If in such action a viola-
7 tion of this article shall be established, the court shall en-
8 join and restrain or otherwise prohibit such violation and
9 in addition thereto shall assess in favor of the plaintiff and
10 against the defendant the costs of the suit and reasonable
11 attorneys’ fees. In such action it shall not be necessary
12 that actual damages to the plaintiff be alleged or proved,
13 but where alleged and proved the plaintiff in said action,
14 in addition to such injunctive relief and fees and costs of
15 suit, shall be entitled to recover from the defendant the
16 amount of actual damages sustained by the plaintiff.

17 (b) In the event no injunctive relief is sought or re-
18 quired, any person injured by a violation of this article
19 may maintain an action for damages alone in any court of
20 competent jurisdiction and the measure of damages in
21 such action shall be the same as prescribed in subsection
22 (a) of this section.

Sec. 13. *Powers and Duties of State Tax Commissioner;
2 Rules and Regulations; Suspension and Revocation of
3 License; Reinstatement of License; Review of Commis-
4 sioners Determinations*.—(a) The state tax commissioner
5 shall have the power to adopt, amend and repeal rules and
6 regulations necessary to enforce and administer the pro-
7 visions of this article. The commissioner is given full
8 power and authority to revoke or suspend the license or

9 permit of any wholesale or retail dealer in the state of
10 West Virginia upon sufficient cause appearing of the viola-
11 tion of this article or upon the failure of such licensee or
12 permittee to comply with any of the provisions of this
13 article.

14 (b) No license or licenses shall be suspended or revoked
15 except upon notice to the licensee and after a hearing as
16 prescribed by said commissioner. The said commissioner,
17 upon a finding by him that the licensee has failed to com-
18 ply with any provision of this article or any rule or regu-
19 lation promulgated thereunder, shall, in the case of the
20 first offender, suspend the license or licenses of the said
21 licensee for a period of not less than five nor more than
22 twenty consecutive business days, and, in the case of a
23 second or plural offender, shall suspend said license or
24 licenses for a period of not less than twenty consecutive
25 business days nor more than twelve months and, in the
26 event the said commissioner finds the offender has been
27 guilty of willful and persistent violations, he may revoke
28 said person's license or licenses.

29 (c) Any person whose license or licenses have been so
30 revoked may apply to the commissioner at the expiration
31 of one year for a reinstatement of his license or licenses.
32 Such license or licenses may be reinstated by the commis-
33 sioner if it shall appear to the satisfaction of said com-
34 missioner that the licensee will comply with the provi-
35 sions of this article and the rules and regulations promul-
36 gated thereunder.

37 (d) No person whose license has been suspended or re-
38 voked shall sell cigarettes or permit cigarettes to be sold
39 during the period of such suspension or revocation on
40 the premises occupied by him or upon other premises
41 controlled by him or others or in any other manner or
42 form whatever. Nor shall any disciplinary proceedings
43 or action be barred or abated by the expiration, transfer,
44 surrender, continuance, renewal or extension of any li-
45 cense issued under the provisions of the cigarette tax law.

46 (e) Any determination by the commissioner and any
47 order of suspension or revocation of a license or licenses
48 thereunder or refusal to reinstate a license or licenses
49 after revocation shall be reviewable by the court in a

50 proper case and in proceedings as provided by procedural
51 law of this jurisdiction.

Sec. 14. *Provisions of Article Severable.*—The provisions of this article shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this article shall continue in full force and effect.

Sec. 15. *Repealing Clause.*—All laws and parts of laws in conflict herewith are hereby repealed.

CHAPTER 11

(Senate Bill No. 250—By Mr. Martin)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

Claims Against the State.

Section

1. Finding and declaring certain claims against the adjutant general; department of agriculture; department of mental health; treasurer; department of public assistance; state road commission; department of public safety; vocational rehabilitation and the state board of education, to be moral obligations of the state, and directing payment thereof.

Be it enacted by the Legislature of West Virginia:

Section 1. *Finding and Declaring Certain Claims against the Adjutant General; Department of Agriculture; Department of Mental Health; Treasurer; Department of Public Assistance; State Road Commission; Department of Public Safety; Vocational Rehabilitation and the State Board of Education, to Be Moral Obligations of the State, and Directing Payment Thereof.*—The Legislature has considered the findings of fact and recommendations reported to it by the attorney general concerning

10 various claims against the state and agencies thereof, and
11 in respect to each of the following claims the Legislature
12 adopts those findings of fact as its own, and hereby de-
13 clares it to be the moral obligation of the state to pay each
14 such claim in the amount specified below, and directs the
15 auditor to issue warrants for the payment thereof out of
16 any fund appropriated and available for the purpose.

17 (a) Claims versus the Adjutant General.

18	P. Marcum	\$ 150.14
19	Betsy Ross Bakeries, Inc.	239.80
20	Paul E. Myers	211.76
21	W. B. Phillips	2,252.98

22 (b) Claims versus Department of Agriculture.

23	G. C. Houser, dba Houser's Hatchery	740.25
24	R. N. Hewitt Corporation	4,362.12

25 (c) Claims versus Department of Mental Health.

26	Glenn C. Hancock	8,525.48
27	Denton Hall	308.88

28 (d) Claim versus Treasurer.

29	Guaranty National Bank of Huntington	1,136.62
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30 (e) Claim versus Department of Public Assistance.

31	Margaret G. Lippert	2,035.75
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32 (g) Claims versus State Road Commission.

33	Criss Pauley	3,095.35
34	Perdue Transfer and Storage Co.	1,310.75
35	R. L. Baumgardner, et al	2,902.03
36	Abernethy, dba Abernethy Buick	230.00
37	Construction Equipment Co.	572.82
38	Stanley Cosner and Susan M., his wife	795.00
39	Alice Hartman	1,105.00
40	Curtis E. Mullins	1,000.00
41	John Falbo	2,500.00
42	Nathan Allen	375.00

43 (i) Claims versus Department of Public Safety.

44	Memorial General Hospital and Golden Clinic	674.80
45	Jack Nelson Morrison and Harry Lyons	8,505.10
46	Burford L. Snyder	1,569.27

47 (j) Claims versus Vocational Rehabilitation.

48	The Pullman Company	11.90
49	St. Joseph's Hospital	676.00

50	St. Mary's Hospital, Huntington, W. Va.....	126.00
51	(k) Claims versus State Board of Education.	
52	Medora Mason Wolfe	2,800.00
53	Potomac Construction Company	1,807.00

CHAPTER 12

(House Bill No. 373—By Mr. Ford)

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article three, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the injury, destruction, concealment, removal, encumbrance or sale of goods sold under conditional sales contracts.

Article 3. Conditional Sales.

Section

15. Injury, destruction, concealment, removal, encumbrance or sale.

Be it enacted by the Legislature of West Virginia:

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

Section 15. *Injury, Destruction, Concealment, Removal,*

2 *Encumbrance or Sale.*—When, prior to the performance of
3 the condition, the buyer, maliciously or with intent to
4 defraud, shall injure, destroy or conceal the goods, or
5 shall sell, mortgage or otherwise dispose of them under
6 claim of full ownership, or maliciously or with intent to
7 defraud shall remove them to another state or to a county
8 in this state where the contract or a copy thereof is not
9 filed, he shall be guilty of a misdemeanor, if the amount
10 due on the goods so injured, destroyed, concealed, re-
11 moved, mortgaged, sold or otherwise disposed of is less
12 than fifty dollars, and, upon conviction thereof, shall be

13 confined in the county jail for not more than one year, or
14 be fined not more than five hundred dollars, or both. Where
15 the amount due on the goods thus injured, destroyed, con-
16 cealed, removed, mortgaged, sold or otherwise disposed
17 of is fifty dollars or more, the buyer shall be guilty of
18 a felony and, upon conviction thereof, shall be fined not
19 less than one hundred nor more than one thousand dol-
20 lars, or be imprisoned in the penitentiary for not less than
21 one year nor more than five years, or both, in the discre-
22 tion of the court. When, prior to the performance of the
23 condition, the buyer, without having given the notice
24 required by section thirteen of this article, but without
25 malice and without intent to defraud, shall remove such
26 goods to another state or to a county in this state where
27 the contract or a copy thereof is not filed, he shall be
28 guilty of a misdemeanor, and, upon conviction thereof,
29 shall be confined in the county jail for not more than one
30 year, or be fined not more than five hundred dollars, or
31 both. Any such removal without such notice having been
32 given shall be deemed prima facie fraudulent.

CHAPTER 13

(House Bill No. 472—By Mr. Solomon and Mr. Nuzum)

[Passed March 11, 1961; in effect ninety days from passage. Became a law with-
out the approval of the Governor.]

AN ACT to amend and reenact section three, article two,
chapter one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to congres-
sional districts.

Article 2. Apportionment of Representation.

Section

3. Congressional districts.

Be it enacted by the Legislature of West Virginia:

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

Section 3. *Congressional Districts.*—The number of members to which the state is entitled in the house of representatives of the Congress of the United States shall be apportioned among the several counties of the state, arranged into five congressional districts, numbered as follows, that is to say:

First District: Braxton, Brooke, Calhoun, Doddridge, Gilmer, Hancock, Harrison, Lewis, Marion, Marshall, Ohio, Taylor and Wetzel.

Second District: Barbour, Berkeley, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mineral, Monongalia, Morgan, Pendleton, Pocahontas, Preston, Randolph, Tucker, Upshur and Webster.

Third District: Boone, Clay, Kanawha, Nicholas and Raleigh.

Fourth District: Cabell, Jackson, Lincoln, Logan, Mason, Pleasants, Putnam, Ritchie, Roane, Tyler, Wayne, Wirt and Wood.

Fifth District: Fayette, Mercer, Mingo, Monroe, McDowell, Summers and Wyoming.

CHAPTER 14

(House Bill No. 465—Originating in the House Committee on Temperance)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending section forty-six, article six thereof, relating to the manufacture and sale of alcoholic liquors.

Alcoholic Liquor Control Amendment.

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "alcoholic liquor control amendment."
3. Form of ballot; election.

4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Be it enacted by the Legislaturc of West Virginia:

Section 1. *Submitting an Amendment to the State Constitution.*—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section forty-six, article six of the constitution of West Virginia be amended to read as follows:

“Section 46. The Legislature shall by appropriate legislation regulate the manufacture and sale of intoxicating liquors within the limits of this state.

Any law legalizing the sale of intoxicating liquors other than by the state as now provided by law, shall provide:

(a) That intoxicating liquors shall be sold, dispensed and/or served only in licensed, bona fide and legitimate restaurants, hotels, clubs, and also in similar facilities owned, controlled, leased or operated by or on behalf of this state, or any municipality of this state, railroad dining cars, aeroplanes and other conveyances moving in interstate commerce.

(b) That intoxicating liquors shall not be sold, dispensed and/or served between the hours of midnight on Saturday and noon on the following Monday, at any time between the hours of midnight and noon on the following day, nor in a saloon or barroom nor to any person unless such person is seated.

(c) That no advertisement, sign, placard or other device designating or advertising the situs of a licensee describing it as a place wherein intoxicating liquors are sold, dispensed and/or served shall be exhibited thereon, in any newspaper or magazine or in any other manner or place whatsoever.

35 (d) That only one license for each one thousand per-
36 sons, in a county, in this state, shall be issued, except,
37 that in counties having less than ten thousand persons,
38 three additional licenses shall be permitted; in counties
39 where facilities described in subsection (a) controlled,
40 owned, leased or operated by or on behalf of this state,
41 or any municipality of this state, are located, additional
42 licenses, equal to the number of such facilities shall be
43 permitted and except, also, in those counties wherein race
44 tracks are located, an additional number of licenses equal
45 to the number of such race tracks shall be permitted.

46 (e) That no more than one license shall be issued to
47 a person.

48 (f) For special local option elections by a county, or
49 an incorporated municipality to determine whether such
50 sale other than by the state as now provided by law
51 shall be permitted within such county or municipality.
52 An incorporated municipality through such a local option
53 election shall have the sole power to forbid or permit
54 such sale within its corporate boundaries regardless of any
55 determination through a county-wide local option election
56 conducted in the county in which such municipality is lo-
57 cated.

58 (g) At least fifty per cent of all revenues from excise
59 and license taxes on the sale of intoxicating liquors other
60 than by the state as now provided by law shall be an-
61 nually appropriated to the support of schools."

Sec. 2. *Amendment to Be Known as the "Alcoholic
2 Liquor Control Amendment"*.—For convenience in referr-
3 ing to said proposed amendment, and in the preparation
4 of the form of the ballot hereinafter provided for, said
5 proposed amendment is hereby designated as the "Alco-
6 holic Liquor Control Amendment".

Sec. 3. *Form of Ballot; Election*.—For the purpose of
2 enabling the voters of the state to vote on the question
3 of said proposed amendment to the constitution at the said
4 general election to be held in the year one thousand nine
5 hundred sixty-two, the board of ballot commissioners of
6 each county is hereby required to place upon, and at the

7 foot of, the official ballot to be voted at that election, the
8 following:

9 Ballot on "Alcoholic Liquor Control Amendment".

10 ☐ For ratification of Alcoholic Liquor Control
11 Amendment.

12 ☐ Against ratification of Alcoholic Liquor Control
13 Amendment.

14 The said election on the proposed amendment at each
15 place of voting shall be superintended, conducted and re-
16 turned, and the result thereof ascertained by the same
17 officers and in the same manner as the election of officers
18 to be voted for at said election, and all the provisions of
19 the law relating to general elections, including all duties
20 to be performed by any officer or board, as far as prac-
21 ticable, and not inconsistent with anything herein con-
22 tained, shall apply to the election held under the pro-
23 visions of this act, except when it is herein otherwise pro-
24 vided. The ballots cast on the question of said proposed
25 amendment shall be counted as other ballots cast at said
26 election.

Sec. 4. *Certificates of Election Commissioners; Canvass
2 of Vote; Certifying Result.*—As soon as the result is as-
3 certained, the commissioners, or a majority of them, and
4 the canvassers (if there be any), or a majority of them,
5 at each place of voting, shall make out and sign two certifi-
6 cates thereof in the following form or the following effect:

7 "We, the undersigned, who acted as commissioners (or
8 canvassers, as the case may be) of the election held at
9 Precinct No. _____, in the district of _____,
10 in the county of _____, on the _____
11 day of _____, one thousand nine hun-
12 dred sixty-two, upon the question of the ratification or
13 rejection of the proposed constitutional amendment, do
14 hereby certify that the result of said election is as fol-
15 lows:

16 "For ratification of Alcoholic Liquor Control Amend-
17 ment _____ votes.

18 "Against ratification of Alcoholic Liquor Control
19 Amendment _____ votes.

20 "Given under our hands this _____ day of _____

21 _____, one thousand nine hundred sixty-two."

22 The said two certificates shall correspond with each
23 other in all respects and contain the full and true returns
24 in said election at each place of voting on said question.
25 The said commissioners, or any one of them (or said can-
26 vassers or any one of them, as the case may be), shall,
27 within four days, excluding Sunday, after that on which
28 said election was held, deliver one of said certificates to
29 the clerk of the county court of his county, together with
30 the ballots, and the other to the clerk of the circuit court of
31 the county.

32 The said certificates, together with the ballots cast on
33 the question of said proposed amendment, shall be laid
34 before the commissioners of the county court at the court-
35 house at the same time the ballots, poll books, and the
36 certificates of election of the members of the Legislature
37 are laid before them; and as soon as the result of said
38 election in the county upon the question of such ratifica-
39 tion or rejection is ascertained, two certificates of such
40 result shall be made out and signed by said commissioners
41 as a board of canvassers, in the form or to the following
42 effect:

43 "We, the board of canvassers of the county of _____
44 _____, having carefully and impartially examin-
45 ed the returns of the election held in said county, in each
46 district thereof, on the _____ day of November, one
47 thousand nine hundred sixty-two, do certify that the re-
48 sults of the election in said county, on the question of
49 the ratification or rejection of the proposed amendment is
50 as follows:

51 "For ratification of Alcoholic Liquor Control Amend-
52 ment _____ votes.

53 "Against ratification of Alcoholic Liquor Control Amend-
54 ment _____ votes.

55 "Given under our hands this _____ day of _____
56 _____, one thousand nine hundred sixty-two."

57 One of the certificates shall be filed in the office of the
58 clerk of the county court, and the other forwarded by
59 mail to the secretary of state, who shall file and preserve
60 the same until the day on which the result of said election
61 in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to as-
5 certain therefrom the result of said election in the state,
6 and declare the same by proclamation published in one
7 or more newspapers printed in the seat of government. If
8 a majority of the votes cast at said election upon said
9 question be for ratification of said amendment, the pro-
10 posed amendment so ratified shall be in force and effect
11 from and after the time of such ratification, as part of the
12 constitution of the state.

Sec. 6. Publication of Proposed Amendment by Governor.

2 *nor.*—The governor shall cause the said proposed amend-
3 ment, with the proper designation for the same as here-
4 inbefore adopted, to be published one time at least three
5 months before such election in some newspaper in every
6 county in which a newspaper is printed, at a price to be
7 agreed upon in advance, in writing, and the cost of such
8 advertising shall in the first instance, if found neces-
9 sary by him, be paid out of the governor's contingent fund
10 and be afterwards repaid to such fund by appropriation
11 of the Legislature.

CHAPTER 15

(Senate Bill No. 38—By Mr. Riley)

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to the power of corporations to indemnify present or former directors and officers.

Article 1. Provisions Relating to Corporations Generally.

Section

18-a. Indemnification of directors and officers.

Be it enacted by the Legislature of West Virginia:

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

Section 18-a. *Indemnification of Directors and Officers.*

2 —Every corporation subject to the provisions of this
3 article shall have power to indemnify any director or
4 officer or former director or officer of the corporation, or
5 any person who may have served at its request as a di-
6 rector or officer of another corporation in which it owns
7 shares of capital stock or of which it is a creditor, against
8 expenses actually and necessarily incurred by him in con-
9 nection with the defense of any action, suit or proceeding,
10 civil or criminal, in which he is made a party by reason of
11 being or having been such director or officer, except in
12 relation to matters as to which he shall be adjudged in
13 such action, suit or proceeding to be liable for negligence
14 or misconduct in the performance of duty to the corpora-
15 tion; and to make any other indemnification that shall be
16 authorized by the articles of incorporation or by any by-
17 law or resolution adopted by the shareholders after notice.

CHAPTER 16

(House Bill No. 274—By Mr. Seibert and Mr. White)

[Passed March 8, 1961: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding to said chapter a new article, numbered and designated article four-d, relating to fiduciary security transfers, and adopting the Uniform Act for Simplification of Fiduciary Security Transfers.

Article 4-d. Uniform Act for Simplification of Fiduciary Security Transfers.**Section**

1. Definitions.
2. Registration in the name of a fiduciary.
3. Assignment by a fiduciary.
4. Evidence of appointment or incumbency.
5. Adverse claims.
6. Nonliability of corporation and transfer agent.
7. Nonliability of third persons.
8. Law governing registering or transferring securities; application of article.
9. Tax obligations.
10. Uniformity of interpretation.
11. Short title.

Be it enacted by the Legislature of West Virginia:

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

- Section 1. *Definitions.*—In this article, unless the context otherwise requires:
- (a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.
 - (b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.
 - (c) "Corporation" means a private or public corporation, association or trust issuing a security.
 - (d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.
 - (e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or

24 more persons having a joint or common interest, or any
25 other legal or commercial entity.

26 (f) "Security" includes any share of stock, bond, de-
27 benture, note or other security issued by a corporation
28 which is registered as to ownership on the books of the
29 corporation.

30 (g) "Transfer" means a change on the books of a cor-
31 poration in the registered ownership of a security.

32 (h) "Transfer agent" means a person employed or
33 authorized by a corporation to transfer securities issued
34 by the corporation.

Sec. 2. *Registration in the Name of a Fiduciary.*—A cor-
2 poration or transfer agent registering a security in the
3 name of a person who is a fiduciary or who is described
4 as a fiduciary is not bound to inquire into the existence,
5 extent, or correct description of the fiduciary relationship,
6 and thereafter the corporation and its transfer agent may
7 assume without inquiry that the newly registered owner
8 continues to be the fiduciary until the corporation or
9 transfer agent receives written notice that the fiduciary
10 is no longer acting as such with respect to the particular
11 security.

Sec. 3. *Assignment by a Fiduciary.*—Except as other-
2 wise provided in this article, a corporation or transfer
3 agent making a transfer of a security pursuant to an as-
4 signment by a fiduciary:

5 (a) May assume without inquiry that the assignment,
6 even though to the fiduciary himself or to his nominee, is
7 within his authority and capacity and is not in breach of
8 his fiduciary duties;

9 (b) May assume without inquiry that the fiduciary has
10 complied with any controlling instrument and with the
11 law of the jurisdiction governing the fiduciary relation-
12 ship, including any law requiring the fiduciary to obtain
13 court approval of the transfer; and

14 (c) Is not charged with notice of and is not bound to
15 obtain or examine any court record or any recorded or un-
16 recorded document relating to the fiduciary relationship
17 or the assignment, even though the record or document is
18 in its possession.

Sec. 4. *Evidence of Appointment or Incumbency.*—A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection (b) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection (b) except to the extent that the contents relate directly to the appointment or incumbency.

Sec. 5. *Adverse Claims.*—(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this article relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or

19 certified mail to the claimant at the address given by him.
20 If the corporation or transfer agent so mails such a notice
21 it shall withhold the transfer for thirty days after the
22 mailing and shall then make the transfer unless restrained
23 by a court order.

Sec. 6. Nonliability of Corporation and Transfer Agent.

2 —A corporation or transfer agent incurs no liability to
3 any person by making a transfer or otherwise acting in
4 a manner authorized by this article.

Sec. 7. Nonliability of Third Persons.—(a) No person
2 who participates in the acquisition, disposition, assign-
3 ment or transfer of a security by or to a fiduciary includ-
4 ing a person who guarantees the signature of the fidu-
5 ciary is liable for participation in any breach of fiduciary
6 duty by reason of failure to inquire whether the trans-
7 action involves such a breach unless it is shown that he
8 acted with actual knowledge that the proceeds of the
9 transaction were being or were to be used wrongfully for
10 the individual benefit of the fiduciary or that the trans-
11 action was otherwise in breach of duty.

12 (b) If a corporation or transfer agent makes a transfer
13 pursuant to an assignment by a fiduciary, a person who
14 guaranteed the signature of the fiduciary is not liable on
15 the guarantee to any person to whom the corporation or
16 transfer agent by reason of this article incurs no liability.

17 (c) This section does not impose any liability upon the
18 corporation or its transfer agent.

*Sec. 8. Law Governing Registering or Transferring
2 Securities; Application of Article.*—(a) The rights and
3 duties of a corporation and its transfer agents in register-
4 ing a security in the name of a fiduciary or in making a
5 transfer of a security pursuant to an assignment by a
6 fiduciary are governed by the law of the jurisdiction
7 under whose laws the corporation is organized.

8 (b) This article applies to the rights and duties of a
9 person other than the corporation and its transfer agents
10 with regard to acts and omissions in this state in con-
11 nection with the acquisition, disposition, assignment or
12 transfer of a security by or to a fiduciary and of a person

- 13 who guarantees in this state the signature of a fiduciary
14 in connection with such a transaction.

Sec. 9. *Tax Obligations.*—This article shall not affect
2 any obligation of a corporation or transfer agent with
3 respect to estate, inheritance, succession or other taxes.
4 imposed by the laws of this state.

Sec. 10. *Uniformity of Interpretation.*—This article
2 shall be so construed as to effectuate its general purpose to
3 make uniform the law of those states which enact it.

Sec. 11. *Short Title.*—This article may be cited as the
2 Uniform Act for Simplification of Fiduciary Security
3 Transfers.

CHAPTER 17

(Senate Bill No. 168—By Mr. Davis and Mr. Carrigan)

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reproduction of checks and other banking records, the use as evidence thereof, and the destruction thereof.

Article 8. Business Operations and Supervision of Banking Institutions, Industrial Loan Companies and Building and Loan Associations.

Section

- 8-a. Reproduction of checks and other banking records; introduction into evidence thereof; destruction thereof.

Be it enacted by the Legislature of West Virginia:

That section eight-a, article eight, 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:

Section 8-a. *Reproduction of Checks and Other Banking*

2 *Records; Introduction into Evidence Thereof; Destruction*
3 *Thereof.*—Any banking institution transacting business in
4 this state may cause to be copied or reproduced by any
5 photographic, photostatic, micro-photographic or other
6 miniature photographic process, all or any number of its
7 checks, and all or any part of its documents, books, rec-
8 ords, correspondence and all other instruments, papers
9 and writings, in any manner relating to the operation of
10 its business, other than its notes, bonds, mortgages and
11 other securities and investments, and may substitute such
12 copies or reproductions either in positive or negative form
13 for the original thereof. Thereafter, such copy or repro-
14 duction, in the form of a positive print thereof, shall be
15 deemed for all purposes to be an original counterpart of
16 and shall have the same force and effect as the original
17 thereof and shall be admissible in evidence in all courts
18 and administrative agencies in this state, to the same
19 extent, and for the same purposes as the original thereof,
20 and the banking institution may destroy or otherwise dis-
21 pose of the original: *Provided, however,* That every bank-
22 ing institution shall retain either the originals or such
23 copies or reproductions of its records of final entry, in-
24 cluding cards used under the card system and deposit
25 tickets for deposits made, for a period of at least six years
26 from the date of the last entry on such books or the date
27 of making of such deposit tickets and card records, or, in
28 the case of a banking institution exercising trust or fiduci-
29 ary powers, until the expiration of six years from the date
30 of termination of any trust or fiduciary relationship by the
31 allowance of a final accounting, release, court decree or
32 other proper means of termination.

33 All circumstances surrounding the making or issuance
34 of such checks, documents, books, records, correspondence
35 and other instruments, papers or writings, or the photo-
36 graphic, photostatic or micro-photographic copies or re-
37 productions thereof, when the same are offered in evi-
38 dence, may be shown to affect the weight but not the ad-
39 missibility thereof.

40 Any device used to copy or reproduce such documents

- 41 and records shall be one which correctly and accurately
42 reproduces the original thereof in all details and film used
43 therein shall be of durable material.

C

CHAPTER 18

(House Bill No. 132—By Mr. Kelley)

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of county courts with respect to construction of waterworks, sewers, sewage disposal plants, improvement of streets, alleys and sidewalks and the assessment of the cost of sanitary sewers and improved streets.

Article 1. County Courts Generally.

Section

- 3-a. Powers with respect to construction of waterworks, sewers, sewage disposal plants, improvement of streets, alleys and sidewalks and the assessment of the cost of sanitary sewers and improved streets.
-

Be it enacted by the Legislature of West Virginia:

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

- Section 3-a. *Powers with Respect to Construction of*
2 *Waterworks, Sewers, Sewage Disposal Plants, Improve-*
3 *ment of Streets, Alleys and Sidewalks and the Assess-*
4 *ment of the Cost of Sanitary Sewers and Improved*
5 *Streets.*—In addition to all other powers and duties now
6 conferred by law upon county courts, such courts are
7 hereby authorized and empowered to install, construct,
8 repair, maintain and operate waterworks, water mains,

9 sewer lines and sewage disposal plants in connection
10 therewith within their respective counties: *Provided,*
11 That the county court of Webster is authorized to expend
12 county funds in the opening of, and upkeep of, a sulphur
13 well now situate on county property: *Provided,* That such
14 authority and power herein conferred upon county courts
15 shall not extend into the territory within any municipal
16 corporation: *Provided, however,* That any county court
17 is hereby authorized to enter into contracts or agreements
18 with any municipality within the county, or with a municip-
19 ality in an adjoining county, with reference to the exer-
20 cise of the powers vested in such court by this section.

21 In addition to the foregoing, the county court shall
22 have the power to improve streets, sidewalks and alleys
23 and lay sewers as follows: Upon petition in writing duly
24 verified, of the persons, firms or corporations owning not
25 less than sixty per cent of the frontage of the lots abutting
26 on both sides of any street or alley, between any two
27 cross-streets, or between a cross-street and an alley in
28 any unincorporated community, requesting the county
29 court so to do according to plans and specifications
30 submitted with such petition and offering to have their
31 property so abutting assessed not only with their por-
32 tion of the cost of such improvement abutting upon
33 their respective properties, but also offering to have their
34 said properties proportionately assessed with the total
35 cost of paving, grading and curbing the intersections
36 of such streets and alleys, the county court may cause
37 any such street or alley to be improved or paved or re-
38 paved substantially with the materials and according to
39 such plans and specifications as hereinafter provided: *Pro-*
40 *vided, however,* That the county court is further author-
41 ized, if the said county court so determines by a unani-
42 mous vote of its constituted membership, that two or more
43 intersecting streets, sidewalks, alleys and sewers, should
44 be improved as one project, in order to satisfy peculiar
45 problems resulting from access as well as drainage prob-
46 lems, then, in that event, the said county court may order
47 such improvements as one single unit and project, upon
48 petition in writing duly verified of the persons, firms or
49 corporations owning not less than sixty per cent of the
50 frontage of the lots abutting on both sides of all streets

51 or alleys, or portions thereof included by said county
52 court in said unit and project.

53 The total cost including labor and materials, engineer-
54 ing, and legal service of grading and paving, curbing,
55 improving any such street or alley (including the cost
56 of the intersections) and assessing the cost thereof shall
57 be borne by the owners of the land abutting upon such
58 street or alley when the work is completed and accepted
59 according to the following plan, that is to say, payment
60 is to be made by all landowners on either side of such
61 street or alley so paved or improved, in such proportion
62 of the total cost as the frontage in feet of each owner's
63 land so abutting bears to the total frontage of all the land
64 so abutting on such street or alley, so paved or improved
65 as aforesaid, which computation shall be made by the
66 county engineer or surveyor and certified by him to the
67 clerk of said court.

68 Upon petition in writing duly verified, of the persons,
69 firms or corporations owning not less than sixty per cent
70 of the frontage of the lots abutting on one side of any
71 street between any two cross-streets or between a cross-
72 street and an alley in any unincorporated community
73 requesting the county court so to do according to plans
74 and specifications submitted with such petition and offer-
75 ing to have their property so abutting assessed with the
76 total cost thereof, the county court may cause any sidewalk
77 to be improved, or paved, or repaved, substantially with
78 such materials according to such plans and specifications
79 and the total cost including labor and materials, engineer-
80 ing and legal service of improving, grading, paving, or
81 repaving such sidewalk and assessing the cost thereof
82 shall, when the work is completed and accepted, be
83 assessed against the owners of the lots or fractional part
84 of lots abutting on such sidewalk, in such portion of the
85 total cost as the frontage in feet of each owner's land so
86 abutting bears to the total frontage of all lots so abutting
87 on such sidewalk so paved or improved, as aforesaid,
88 which computation shall be made by the county engineer
89 or surveyor and certified by him to the clerk of said court.
90 Upon petition in writing duly verified, of the persons,
91 firms or corporations owning not less than sixty per cent
92 of the frontage of the lots abutting on both sides of any

93 street or alley, in any unincorporated community request-
94 ing the county court so to do according to plans and
95 specifications submitted with such petition and offering
96 to have their property so abutting assessed with the cost,
97 as hereinafter provided, the county court may lay and
98 construct sanitary sewers in any street or alley with such
99 materials and substantially according to such plans and
100 specifications and when such sewer is completed and ac-
101 cepted, the county engineer or surveyor shall report to the
102 county court, in writing, the total cost of such sewer and
103 a description of the lots and lands, as to the location,
104 frontage, depth and ownership liable for such sewer
105 assessment, so far as the same may be ascertained, to-
106 gether with the amount chargeable against each lot and
107 owner, calculated in the following manner: The total cost
108 of constructing and laying the sewer including labor,
109 materials, legal and engineering services shall be borne
110 by the owners of the land abutting upon the streets and
111 alleys, in which the sewer is laid according to the follow-
112 ing plan: Payment is to be made by each landowner on
113 either side of such portion of a street or alley in which
114 such sewer is laid, in such proportions as the frontage
115 of his land upon said street or alley bears to the total
116 frontage of all lots so abutting on such street or alley.
117 In case of a corner lot, frontage is to be measured along
118 the longest dimensions thereof abutting on such street or
119 alley in which such sewer is laid. Any lot having a depth of
120 two hundred feet or more, and fronting on two streets, or
121 alleys, one in the front and one in the rear of said lot, shall
122 be assessed on both of said streets or alleys if a sewer is
123 laid in both such streets and alleys. Where a corner lot has
124 been assessed on the end it shall not be assessed on the side
125 for the same sewer, and where it has been assessed on the
126 side it shall not be assessed on the end for the same sewer.
127 If the petitioners request the improvement of any such
128 street, alley or sidewalk in a manner which does not
129 require the permanent paving, or repaving, thereof, the
130 county court shall likewise have authority to improve
131 such street, alley or sidewalk, substantially as requested
132 in such petition, and the total cost thereof including
133 labor, materials, engineering and legal services shall be
134 assessed against the abutting owners in the proportion

135 which the frontage of their lots abutting upon such street,
136 alley or sidewalk bears to the total frontage of all lots
137 abutting upon such street, alley or sidewalk, so improved.

138 Upon the filing of such petition and before work is
139 begun, or let to contract, the county court shall fix a time
140 and place for hearing protests and shall require the peti-
141 tioners to post notice of such hearing in at least two
142 conspicuous places on the street, alley or sidewalk affect-
143 ed, and to give notice thereof by publication in a news-
144 paper of general circulation in the county in which the
145 improvement is to be made at least once before said
146 hearing, which hearing shall be held not less than ten
147 nor more than thirty days after the filing of such petition.

148 At the time and place set for hearing protests the county
149 court may examine witnesses and consider other evidence
150 to show that said petition was filed in good faith; that
151 the signatures thereto are genuine; and that the proposed
152 improvement, paving, repaving, or sewerage, will result
153 in special benefits to all owners of property abutting on
154 said street, alley or sidewalk in an amount at least equal
155 in value to the cost thereof. The court shall within ten
156 days thereafter enter a formal order stating its decision
157 and if the petition be granted shall proceed after due
158 advertisement, reserving the right to reject any or all
159 bids, to let a contract for such work and materials to the
160 lowest responsible bidder.

161 Any owner of property abutting upon said street, alley
162 or sidewalk aggrieved by such order shall have the right
163 to review the same on the record made before the county
164 court by filing within ten days after the entry of such
165 order, a petition with the clerk of the circuit court assign-
166 ing errors and giving bond in a penalty to be fixed by
167 the circuit court to pay any costs or expenses incurred
168 upon such appeal should the order of the county court
169 be affirmed. The circuit court shall proceed to review
170 the matter as in other cases of appeal from the county
171 court.

172 All assessments made under this section shall be cer-
173 tified to the county clerk and recorded in a proper trust
174 deed book and indexed in the name of the owner of any
175 lot or fractional part of a lot so assessed. The assessment
176 so made shall be a lien on the property liable therefor,

177 and shall have priority over all other liens except those
178 for taxes, and may be enforced by a civil action in the
179 name of the contractor performing the work in the same
180 manner as provided for other liens for permanent im-
181 provements. Such assessment shall be paid in not more
182 than ten equal annual installments, bearing interest at
183 the rate of six per cent per annum as follows: The first
184 installment, together with interest on the whole assess-
185 ment, shall be paid not later than one year from the date
186 of such assessment, and a like installment with interest
187 on the whole amount remaining unpaid each year there-
188 after until the principal and all interest shall have been
189 paid in full.

190 The county court may issue coupon-bearing certificates
191 payable in not more than ten equal annual installments
192 for the amount of such assessment and the interest there-
193 on, to be paid by the owner of any lot or fractional part
194 thereof, fronting on such street, alley or sidewalk which
195 has been improved, paved, or repaved or in which a sewer
196 has been laid, as aforesaid, and the holder of said certi-
197 ficate shall have a lien having priority over all other liens
198 except those for taxes upon the lot or part of lot fronting
199 on such street, alley or sidewalk, and such certificate
200 shall likewise draw interest from the date of assessment
201 at the rate of six per cent per annum, and payment
202 thereof may be enforced in the name of the holder of said
203 certificate by proper civil action in any court having
204 jurisdiction to enforce such lien.

205 Certificates authorized under this section may be issued,
206 sold or negotiated to the contractor doing the work, or
207 to his assignee, or to any person, firm, or corporation:
208 *Provided*, That the county court in issuing such certificates
209 shall not be held as a guarantor, or in any way liable
210 for the payment thereof. Certificates so issued shall con-
211 tain a provision to the effect that in the event of default
212 in the payment of any one or more of said installments,
213 when due, said default continuing for a period of sixty
214 days, all unpaid installments shall thereupon become
215 due and payable, and the owner of said certificates may
216 proceed to collect the unpaid balance thereof in the man-
217 ner hereinbefore provided.

218 In all cases where petitioners request paving or repav-

219 ing, or the laying of sewers under the provisions of this
220 section, the county court shall let the work of grading,
221 paving, curbing or sewerage to contract to the lowest
222 responsible bidder. In each such case the county court
223 shall require a bond in the penalty of the contract price
224 guaranteeing the faithful performance of the work and
225 each such contract shall require the contractor to repair
226 any defects due to defective workmanship or materials
227 discovered within one year after the completion of the
228 work.

229 Upon presentation to the clerk of the county court of
230 the certificates evidencing the lien, duly cancelled and
231 marked paid by the holder thereof, or evidence of pay-
232 ment of the assessment if no certificates have been issued,
233 said clerk shall execute and acknowledge a release of
234 the lien which release may be recorded, as other releases
235 in the office of the clerk of the county court.

236 The owner of any lot or fractional part of a lot abutting
237 upon such street, alley or sidewalk so improved, paved,
238 repaved or sewerage shall have the right to anticipate
239 the payment of any such assessment or certificate by pay-
240 ing the principal amount due, with interest accrued there-
241 on to date of payment, and also to pay the entire amount,
242 without interest at any time, within thirty days following
243 the date of the assessment.

244 Nothing in this section contained shall be construed
245 to authorize the county courts of the various counties
246 to acquire any road construction, ditching, or paving
247 equipment. The county courts are hereby authorized to
248 rent from the state road commissioner or any other per-
249 son, firm or corporation such equipment as may be neces-
250 sary from time to time, to improve any street or sidewalk
251 which petitioners do not desire to have paved in a per-
252 manent manner, and for such purpose to employ such
253 labor as may be necessary but no expense connected
254 therewith shall be charged to any county funds.

255 No county court shall be under any duty after the pav-
256 ing, repaving or improvement of any street, alley or side-
257 walk or the laying of any sanitary sewer under the pro-
258 visions of this section, to maintain or repair the same, but
259 any such court shall have authority upon petition duly
260 verified, signed by at least sixty per cent of the owners

261 of property abutting upon any improvement made under
262 this section, to maintain or repair such improvement or
263 sewer and to assess the cost thereof against the owners
264 of such abutting property in the same manner as the cost
265 of the original improvement.

CHAPTER 19

(House Bill No. 445—By Mr. Speaker, Mr. Singleton, and
Miss Tsapis)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section six, sections six-(one) through six-(fifty-five), inclusive, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to salaries of assistant prosecuting attorneys, stenographers and clerks for prosecuting attorneys.

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

6. Assistants, stenographers and clerks for prosecuting attorney; salaries; when court may appoint attorney to prosecute.
6-(1) to 6-(55). Salaries of assistants, stenographers and clerks for prosecuting attorneys of the various counties of the state.

Be it enacted by the Legislature of West Virginia:

That section six, sections six-(one) through six-(fifty-five), inclusive, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

- Section 6. *Assistants, Stenographers and Clerks for
2 Prosecuting Attorney; Salaries; When Court May Appoint
3 Attorney to Prosecute.*—The prosecuting attorneys of the
4 several counties of the state may, with the assent of the
5 county courts of their respective counties, entered of rec-
6 ord, appoint to assist them in the discharge of their offi-

7 cial duties for and during their respective terms of office,
8 the number of practicing attorneys, stenographers and
9 clerks set forth in sections six-(one) through six-(fifty-
10 five), inclusive, of this article. Each such assistant prose-
11 cuting attorney shall take the same oath and may perform
12 the same duties as his principal. Each assistant shall serve
13 at the will and pleasure of his principal and he may be
14 removed from office by the circuit court of the county in
15 which he is appointed for any cause for which his principal
16 might be removed.

17 If in any case the prosecuting attorney and his assistant
18 be unable to act, or if in the opinion of the court it would
19 be improper for him or his assistant to act, the court shall
20 appoint some competent practicing attorney to act in such
21 case. The court shall certify to the county court the per-
22 formance of such service when completed and recommend
23 to the county court a reasonable allowance for such at-
24 torney for such service, and such sum, when allowed by
25 the county court, shall be paid out of the county treasury.
26 No provision of this section shall be construed to prohibit
27 the employment by any person of a competent attorney
28 or attorneys to assist in the prosecution of any person or
29 corporation charged with crime.

30 The county courts of the several counties shall com-
31 pensate the assistant prosecuting attorneys, stenographers
32 and clerks of their respective counties in accordance with
33 the following annual salary provisions:

34 (1) In counties for which definite salaries are fixed by
35 provisions of sections six-(one) through six-(fifty-five),
36 inclusive, of this article, such definite salaries shall be
37 paid.

38 (2) In counties for which minimum and maximum
39 salary limits are fixed by provisions of sections six-(one)
40 through six-(fifty-five), inclusive, of this article, the sal-
41 aries shall be fixed and paid within such limits.

42 (3) In the counties for which salaries are not fixed and
43 limited by provisions of sections six-(one) through six-
44 (fifty-five), inclusive, of this article, reasonable salaries
45 shall be fixed and paid by the respective county courts.

46 Such salaries and compensation shall be paid monthly,
47 semimonthly or otherwise as provided by law. In any

48 case wherein provision is not made in this article for
49 payment of the salary of an assistant prosecuting attor-
50 ney, the principal shall pay and compensate such assistant
51 for services rendered. The compensation and salaries to
52 be paid assistant attorneys as provided in this article shall
52 include compensation provided by law for such assistant's
53 services as attorney for the county board of education and
54 other administrative boards and officers of his county.

2 Sec. 6-(1). *Same—Barbour County.*—For the county of
3 Barbour, one assistant attorney, one thousand dollars; one
4 stenographer, not less than one thousand two hundred
4 nor more than one thousand eight hundred dollars.

2 Sec. 6-(2). *Same—Berkeley County.*—For the county
3 of Berkeley, one assistant attorney, not more than two
4 thousand four hundred dollars; one stenographer, not
4 more than two thousand four hundred dollars.

2 Sec. 6-(3). *Same—Boone County.*—For the county of
3 Boone, one assistant attorney, three thousand four hun-
4 dred dollars; one stenographer at two thousand eight
4 hundred dollars.

2 Sec. 6-(4). *Same—Braxton County.*—For the county of
3 Braxton, one assistant attorney; one stenographer at one
3 thousand eight hundred dollars.

2 Sec. 6-(5). *Same—Brooke County.*—For the county of
3 Brooke, one assistant attorney, three thousand dollars; one
4 stenographer, not less than one thousand five hundred nor
4 more than two thousand seven hundred dollars.

2 Sec. 6-(6). *Same—Cabell County.*—For the county of
3 Cabell, three assistant attorneys, not more than six thou-
4 sand five hundred dollars each; two stenographers not
4 more than four thousand dollars each.

2 Sec. 6-(7). *Same—Calhoun County.*—For the county of
3 Calhoun, one assistant attorney, three hundred dollars;
4 one stenographer, at not more than one thousand five hun-
4 dred dollars.

2 Sec. 6-(8). *Same—Clay County.*—For the county of
3 Clay, one assistant attorney; one clerk or stenographer or
3 in lieu thereof one practicing attorney, not less than one

4 thousand nor more than one thousand eight hundred dol-
5 lars.

Sec. 6-(9). *Same—Doddridge County.*—For the county
2 of Doddridge, one assistant attorney; one stenographer,
3 not more than one thousand eight hundred dollars.

Sec. 6-(10). *Same—Fayette County.*—For the county of
2 Fayette, first assistant attorney, five thousand three hun-
3 dred dollars; second assistant attorney, four thousand four
4 hundred dollars; one stenographer at a salary to be fixed
5 by the county court.

Sec. 6-(11). *Same—Gilmer County.*—For the county of
2 Gilmer, one assistant attorney; one stenographer, not
3 more than one thousand two hundred dollars.

Sec. 6-(12). *Same—Grant County.*—For the county of
2 Grant, one assistant attorney; one stenographer or clerk,
3 not more than one thousand five hundred dollars.

Sec. 6-(13). *Same—Greenbrier County.*—For the coun-
2 ty of Greenbrier, one assistant attorney; one stenographer,
3 not more than two thousand nine hundred forty dollars.

Sec. 6-(14). *Same—Hampshire County.*—For the coun-
2 ty of Hampshire, one assistant attorney; one stenographer,
3 not less than one thousand two hundred nor more than
4 two thousand dollars.

Sec. 6-(15). *Same—Hancock County.*—For the county of
2 Hancock, one assistant attorney, not less than three thou-
3 sand nor more than three thousand nine hundred dollars;
4 one stenographer, not more than three thousand dollars.

Sec. 6-(16). *Same—Hardy County.*—For the county of
2 Hardy, one assistant attorney; one stenographer or one
3 clerk at a salary fixed by the prosecuting attorney, not to
4 exceed one thousand five hundred dollars.

Sec. 6-(17). *Same—Harrison County.*—For the county
2 of Harrison, first assistant attorney, six thousand five hun-
3 dred dollars; second assistant attorney, five thousand five
4 hundred dollars; two stenographers, not less than nine
5 hundred dollars nor more than three thousand six hun-
6 dred dollars for each.

2 Sec. 6-(18). *Same—Jackson County.*—For the county
3 of Jackson, one assistant attorney, not less than six hun-
4 dred nor more than one thousand two hundred dollars;
5 one stenographer, not less than one thousand six hundred
6 dollars nor more than two thousand two hundred dollars.

2 Sec. 6-(19). *Same—Jefferson County.*—For the county
3 of Jefferson, the prosecuting attorney may employ a ste-
4 nographer for his office at a salary of not less than one
5 thousand eight hundred dollars nor more than two thou-
6 sand eight hundred dollars per annum, payable out of the
7 county treasury to be fixed by the said prosecuting at-
8 torney of said county of Jefferson.

2 Sec. 6-(20). *Same—Kanawha County.*—For the county
3 of Kanawha, first assistant attorney, not less than six
4 thousand nor more than nine thousand six hundred dol-
5 lars, three assistant attorneys, not less than six thousand
6 nor more than nine thousand dollars each, and stenog-
7 raphers and clerks at a salary to be fixed by the county
8 court payable out of the county treasury of said county of
9 Kanawha.

2 Sec. 6-(21). *Same—Lewis County.*—For the county of
3 Lewis, one assistant attorney, not more than one thousand
4 eight hundred dollars; one stenographer, not less than six
5 hundred nor more than one thousand eight hundred dol-
6 lars.

2 Sec. 6-(22). *Same—Lincoln County.*—For the county of
3 Lincoln, one assistant attorney, not more than three thou-
4 sand six hundred dollars; one stenographer or clerk, not
5 more than three thousand dollars.

2 Sec. 6-(23). *Same—Logan County.*—For the county of
3 Logan, one assistant attorney, at six thousand five hun-
4 dred dollars; one stenographer, not more than three thou-
5 sand nine hundred dollars; second stenographer, not more
6 than three thousand three hundred dollars.

2 Sec. 6-(24). *Same—Marion County.*—For the county of
3 Marion, two assistant attorneys, not less than four thou-
4 sand six hundred nor more than five thousand two hun-
5 dred dollars for each; one stenographer, not more than
6 three thousand dollars.

Sec. 6-(25). *Same—Marshall County.*—For the county
2 of Marshall, one assistant attorney, at two thousand four
3 hundred dollars; one stenographer or clerk, not less than
4 two thousand eight hundred nor more than three thou-
5 sand three hundred dollars.

Sec. 6-(26). *Same—Mason County.*—For the county of
2 Mason, one assistant attorney, not less than one thousand
3 five hundred nor more than two thousand dollars; one
4 stenographer, not less than one thousand five hundred
5 nor more than two thousand dollars.

Sec. 6-(27). *Same—McDowell County.*—For the coun-
2 ty of McDowell, first assistant attorney, not less than three
3 thousand nor more than five thousand four hundred dol-
4 lars; second assistant attorney, not less than three thou-
5 sand nor more than five thousand dollars; one stenog-
6 rapher, not less than three thousand three hundred nor
7 more than three thousand six hundred dollars.

Sec. 6-(28). *Same—Mercer County.*—For the county of
2 Mercer, one assistant attorney, at five thousand five hun-
3 dred dollars; one stenographer or clerk, not more than
4 three thousand three hundred dollars.

Sec. 6-(29). *Same—Mineral County.*—For the county
2 of Mineral, one assistant attorney, not more than one
3 thousand two hundred dollars; one stenographer, not
4 more than three thousand dollars.

Sec. 6-(30). *Same—Mingo County.*—For the county of
2 Mingo, one assistant attorney, not more than four thou-
3 sand five hundred dollars; one stenographer, not more
4 than four thousand two hundred dollars.

Sec. 6-(31). *Same—Monongalia County.*—For the coun-
2 ty of Monongalia, one assistant attorney, at four thousand
3 dollars; one stenographer, not less than two thousand four
4 hundred nor more than three thousand six hundred dol-
5 lars.

Sec. 6-(32). *Same—Monroe County.*—For the county of
2 Monroe, one assistant attorney; one stenographer, not
3 more than six hundred dollars.

2 Sec. 6-(33). *Same—Morgan County.*—For the county of
3 Morgan, one assistant attorney.

2 Sec. 6-(34). *Same—Nicholas County.*—For the county
3 of Nicholas, one assistant attorney, not more than one
4 thousand two hundred dollars; one stenographer or clerk,
5 at a salary to be fixed by the county court.

2 Sec. 6-(35). *Same—Ohio County.*—For the county of
3 Ohio, first assistant attorney, at five thousand dollars;
4 second assistant attorney, at four thousand dollars; third
5 assistant attorney, at four thousand dollars; one stenog-
6 rapher, not more than three thousand three hundred dol-
7 lars; second stenographer, not more than one thousand
8 two hundred dollars.

2 Sec. 6-(36). *Same—Pendleton County.*—For the coun-
3 ty of Pendleton, one assistant attorney; one stenographer
4 or clerk, not more than one thousand five hundred dol-
5 lars.

2 Sec. 6-(37). *Same—Pleasants County.*—For the county
3 of Pleasants, one stenographer, not more than two thou-
4 sand four hundred dollars.

2 Sec. 6-(38). *Same—Pocahontas County.*—For the coun-
3 ty of Pocahontas, one assistant attorney; one stenographer,
4 not more than two thousand one hundred dollars.

2 Sec. 6-(39). *Same—Preston County.*—For the county of
3 Preston, one assistant attorney at a salary not exceeding
4 three thousand dollars; one stenographer, not more than
5 three thousand dollars.

2 Sec. 6-(40). *Same—Putnam County.*—For the county of
3 Putnam, one assistant attorney, not more than three thou-
4 sand dollars; one stenographer, not more than three thou-
5 sand dollars.

2 Sec. 6-(41). *Same—Raleigh County.*—For the county of
3 Raleigh, one assistant attorney, at five thousand four hun-
4 dred dollars; one stenographer, not more than three thou-
5 sand six hundred dollars.

2 Sec. 6-(42). *Same—Randolph County.*—For the county
3 of Randolph, one assistant attorney, not more than three

3 thousand six hundred dollars; one stenographer, not less
4 than two thousand seven hundred nor more than three
5 thousand six hundred dollars.

Sec. 6-(43). *Same—Ritchie County.*—For the county of
2 Ritchie, one assistant attorney; one stenographer, not less
3 than one thousand two hundred dollars nor more than
4 one thousand eight hundred dollars.

Sec. 6-(44). *Same—Roane County.*—For the county of
2 Roane, one assistant attorney; one stenographer, not less
3 than one thousand five hundred nor more than two thou-
4 sand four hundred dollars.

Sec. 6-(45). *Same—Summers County.*—For the county
2 of Summers, one assistant attorney, not less than one
3 thousand nor more than two thousand dollars; one ste-
4 nographer, not less than one thousand five hundred nor
5 more than three thousand dollars.

Sec. 6-(46). *Same—Taylor County.*—For the county of
2 Taylor, one assistant attorney; one stenographer, not less
3 than one thousand two hundred nor more than three thou-
4 sand dollars.

Sec. 6-(47). *Same—Tucker County.*—For the county of
2 Tucker, one assistant attorney.

Sec. 6-(48). *Same—Tyler County.*—For the county of
2 Tyler, one assistant attorney; one stenographer, not more
3 than one thousand eight hundred dollars.

Sec. 6-(49). *Same—Upshur County.*—For the county
2 of Upshur, one assistant attorney, not more than one thou-
3 sand two hundred dollars; one stenographer, not more
4 than one thousand two hundred dollars.

Sec. 6-(50). *Same—Wayne County.*—For the county
2 of Wayne, one assistant attorney, at four thousand two
3 hundred dollars; one stenographer, three thousand three
4 hundred dollars.

Sec. 6-(51). *Same—Webster County.*—For the county
2 of Webster, one assistant attorney, not less than six hun-
3 dred nor more than nine hundred dollars; one stenograph-
4 er, one thousand eight hundred dollars.

Sec. 6-(52). *Same—Wetzel County.*—For the county of
2 Wetzel, one assistant attorney, not less than nine hundred
3 dollars nor more than one thousand two hundred dollars;
4 one stenographer, not more than three thousand one hun-
5 dred dollars.

Sec. 6-(53). *Same—Wirt County.*—For the county of
2 Wirt, one stenographer or clerk at not more than one thou-
3 sand dollars.

Sec. 6-(54). *Same—Wood County.*—For the county of
2 Wood, one assistant attorney, at four thousand dollars;
3 one stenographer, at three thousand six hundred dollars.

Sec. 6-(55). *Same—Wyoming County.*—For the county
2 of Wyoming, one assistant attorney, not less than two
3 thousand nor more than four thousand two hundred dol-
4 lars; one stenographer at a salary fixed by the county
5 court.

CHAPTER 20

(House Bill No. 79—By Mr. Myles and Mr. Vickers)

[Passed March 7, 1961; in effect March 31, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections one-h, one-l and one-u, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of courts in the eighth, twelfth and twenty-first judicial circuits.

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

Section

- 1-h. Eighth circuit.
- 1-l. Twelfth circuit.
- 1-u. Twenty-first circuit.

Be it enacted by the Legislature of West Virginia:

That sections one-h, one-l and one-u, article two, chapter fifty-one of the code of West Virginia, one thousand nine hun-

dred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1-h. *Eighth Circuit*.—For the county of McDowell, on the fourth Monday in February, May, August and November.

Sec. 1-l. *Twelfth Circuit*.—For the county of Fayette, on the second Tuesday in January, May and September.

Sec. 1-m. *Twenty-first Circuit*.—For the county of Grant, on the first Tuesday in April, the second Tuesday in July and the first Tuesday in November.

For the county of Mineral, on the second Tuesday in January; the first Tuesday in May and the first Tuesday in September.

For the county of Tucker, on the second Tuesday in February, the first Tuesday in June and the first Tuesday in October.

CHAPTER 21

(Senate Bill No. 172—By Mr. Martin)

[Passed February 21, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removal of court records and papers out of the county and prescribing penalty for unlawful removal.

Article 4. General Provisions Relating to Clerks of Courts.

Section

4. Removal of records or papers out of county; penalty.

Be it enacted by the Legislature of West Virginia:

That section four, article four, 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:

Section 4. *Removal of Records or Papers Out of County; Penalty.*—None of the records or papers of a court shall be removed by the clerk, nor allowed by him or by the court to be removed, out of the county wherein the clerk's office is kept, except on an occasion of invasion or insurrection, actual or threatened, when, in the opinion of the court, or, in a very sudden case, of the clerk, the same will be endangered, after which they shall be returned as soon as the danger ceases; and except in such other cases as are specifically provided by law, or by general order of the court permitting the removal or transfer thereof to counties within his circuit; or to another circuit in cases being heard by a visiting or special judge. In such cases of removal or transfer the clerk of the court from which such papers and records are removed shall take and preserve an appropriate written receipt therefor. Any clerk violating this section shall forfeit six hundred dollars. However, this section shall not be construed as to prevent a judge of a circuit court from taking files of papers from any county of his circuit, or directing the clerk to send such files to him, when he needs to use the same.

CHAPTER 22

(Senate Bill No. 30—By Mr. Kaufman, by request)

[Passed February 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article eight, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the librarian of the West Virginia law library, his bond, assistants and compensation.

Article 8. State Law Libraries.**Section**

2. Librarian; bond; assistants; compensation.

Be it enacted by the Legislature of West Virginia:

That section two, article eight, 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:

Section 2. Librarian; Bond; Assistants; Compensation.—

- 2 The supreme court of appeals, or the judges thereof in
3 vacation, shall appoint a competent librarian to have im-
4 mediate custody of the West Virginia law library under
5 the direction of the court. Such librarian shall give bond
6 in a penalty fixed by the court of not less than two nor
7 more than five thousand dollars, with surety thereon, to
8 be approved by the court, and conditioned as provided for
9 official bonds. Such bond shall be deposited for safekeep-
10 ing with the clerk of the court. The librarian shall be an
11 officer of the court and shall hold his office and be remov-
12 able at its pleasure. Vacancies in the office of librarian
13 occurring during vacation of the court may be filled by
14 appointment in writing made by the judges of the court,
15 or any three of them. When, in the opinion of the court,
16 other employees are needed for the proper protection and
17 use of the library, it may employ such assistants as may
18 be necessary for that purpose. The salary of the librarian
19 and assistants shall be fixed by the court and shall be pay-
20 able in monthly installments.

CHAPTER 23

(House Bill No. 217—By Mr. Speaker, Mr. Singleton, and
Mr. Seibert)

[Passed February 22, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, six-a and twelve,
article nine, chapter fifty-one 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 six-b, all relating to eligibility for and the payment of benefits under the retirement system for judges of courts of record, service and retirement of judges over sixty-five years of age, eligibility for and the payment of annuities to the widows of judges who qualify for retirement benefits under the retirement system for judges of courts of record, and refunds due judges of courts of record or their widows, as the case may be, from the judges' retirement fund.

Article 9. Retirement System for Judges of Courts of Record.

Section

6. Eligibility for and payment of benefits.
- 6-a. Eligibility benefits; service and retirement of judges over sixty-five years of age.
- 6-b. Annuities for the widows of those judges eligible for retirement benefits; amount and payment of same.
12. Refunds.

Be it enacted by the Legislature of West Virginia:

That sections six, six-a, and twelve, article nine, chapter fifty-one 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 six-b, all to read as follows:

Section 6. Eligibility for and Payment of Benefits.—

- 2 Except as otherwise provided in sections five, twelve and
- 3 thirteen of this article, any person who is now serving,
- 4 or who shall hereafter serve as a judge of any court of
- 5 record of this state and shall have served as such judge
- 6 for a period of not less than sixteen full years and shall
- 7 have reached the age of sixty-five years, or who has
- 8 served as judge of such court or of that court and other
- 9 courts of record of the state for a period of sixteen full
- 10 years or more (whether continuously or not and whether
- 11 said service be entirely before or after this act shall be-
- 12 come effective, or partly before and partly after said
- 13 date, and whether or not said judge shall be in office on
- 14 the date he shall become eligible to benefits hereunder),

15 shall, upon a determination and certification of his eligi-
16 bility as provided in section nine hereof, be paid from the
17 fund annual retirement benefits, so long as he shall live,
18 in an amount equal to seventy-five per cent of the an-
19 nual salary of the office from which he has retired based
20 upon such salary of such office as such salary may be
21 changed from time to time during the period of his re-
22 tirement and the amount of his retirement benefits shall
23 be based upon and be equal to seventy-five per cent of
24 the highest annual salary of such office for any one cal-
25 endar year during the period of his retirement, and shall
26 be payable in monthly installments: *Provided*, That such
27 retirement benefits shall be paid only after said judge has
28 resigned as such or, for any reason other than his im-
29 peachment, his service as such has ended: *And provided*
30 *further*, That the provisions of this article shall apply to
31 those judges who were in office at the time it originally
32 became effective, those who have since become judges,
33 those who have retired under the provisions thereof, and
34 those who shall hereafter serve as judges of the courts
35 of record of this state.

36 In determining eligibility for the benefits provided by
37 this section, any portion of the term of office of any judge
38 of a court of record which shall have elapsed while such
39 judge was on active duty (including leaves, furloughs,
40 and time consumed going to his place of duty and re-
41 turning to his place of residence after discharge or re-
42 lease from active duty) in the armed forces of the United
43 States shall be considered as served: *Provided, however*,
44 That any judge who enters active duty in the armed forces
45 of the United States during his term of office and after
46 the effective date of this article, shall during, or within
47 one year after such military service, pay into the state
48 treasury all contributions required by section four of this
49 article, and, by reason of such military service not de-
50 ducted from his salary.

Sec. 6-a. *Eligibility Benefits; Service and Retirement of*
2 *Judges over Sixty-Five Years of Age.*—Any judge of a
3 court of record of this state, who shall have served for a
4 period of not less than eight full years after attaining
5 the age of sixty-five years and who shall have made pay-

6 ments into the judges' retirement fund as provided in this
7 article for each month during which he served as such
8 judge following the effective date of this section, shall be
9 subject to all the applicable terms and provisions of this
10 article, not inconsistent with the provisions hereof, and
11 shall receive retirement benefits in an amount equal to
12 seventy-five per cent of the annual salary of the office
13 from which he has retired based upon such salary of such
14 office as such salary may be changed from time to time dur-
15 ing the period of his retirement and the amount of his re-
16 tirement benefits shall be based upon and be equal to
17 seventy-five per cent of the highest annual salary of such
18 office for any one calendar year during the period of his re-
19 tirement, and shall be payable in monthly installments.
20 If such judge shall become incapacitated to perform his
21 said duties before the expiration of his said term and
22 after serving for six years thereof, and upon the ac-
23 ceptance of his resignation as in this article provided, he
24 shall be paid the annual retirement benefits as herein
25 provided so long as he shall live. The provisions of this
26 section shall prevail over any language to the contrary in
27 this article contained.

Sec. 6-b. *Annuities for the Widows of those Judges*
2 *Eligible for Retirement Benefits; Amount and Payment*
3 *of Same.*—There shall be paid, from the fund created by
4 section two of this article, an annuity to the widow of a
5 judge, who, at death, is eligible for the retirement bene-
6 fits provided by section six or six-a of this article, and who
7 dies, either while in office or after resignation or retire-
8 ment from office pursuant to the provisions of this article:
9 *Provided, however,* That any annuity accruing under this
10 section shall be paid from, and only from, the fund, and
11 the interest thereon, accumulated through the contribu-
12 tions of judges from whose salary deductions have been
13 made, as herein provided, and no annuity accruing here-
14 under shall be paid from any public moneys contributed
15 to the Judges' Retirement Fund by the State of West
16 Virginia.

17 Said annuity shall amount to forty per cent of the an-
18 nual salary of the office which said judge held at his
19 death or from which he resigned or retired. In the event

20 said salary is increased or decreased while an annuitant
21 is receiving the benefits hereunder, her annuity shall
22 amount to forty per cent of the new salary. The annuity
23 granted hereunder shall accrue monthly and shall be due
24 and payable in monthly installments on the first business
25 day of the month following the month for which the
26 annuity shall have accrued. Such annuity shall com-
27 mence on the first day of the month in which said judge
28 dies and shall terminate upon the death or remarriage of
29 the annuitant.

Sec. 12. *Refunds.*—Any judge of a court of record of
2 this state whose services have terminated, otherwise than
3 by retirement under provisions of this article, shall, upon
4 his written demand, or the written demand of his personal
5 representative, filed with the state auditor, by a proper
6 warrant of the state auditor drawn on the fund, be re-
7 funded, without interest, any and all money paid by or
8 for said judge into the fund. Such repayment shall termi-
9 nate all rights of said judge to participate thereafter at
10 any time in the benefits and pay of the retirement sys-
11 tem, without prejudice, however, to his right to re-enter
12 the system after a subsequent appointment or election
13 to a qualified judgeship, but without credit for any prior
14 years of service: *Provided, however,* That should a re-
15 tired judge die, without leaving a widow surviving, while
16 receiving retirement benefits under the provisions of this
17 article, and before he has received from the Judges' Re-
18 tirement Fund an amount equal to, or in excess of, sums
19 paid by him into such fund, or should the widow, as
20 defined by section six-b of this article, who is entitled to
21 an annuity under the provisions of section six-b die or
22 remarry while receiving annuity benefits, and before she
23 and her husband have received from the Judges' Retire-
24 ment Fund an amount equal to, or in excess of, sums
25 contributed by him to such fund, then, and in either of
26 these events, the state auditor shall, upon the written de-
27 mand of the personal representative of the judge or widow,
28 as the case may be, filed with the state auditor, by a
29 proper warrant drawn on the fund, refund, without in-
30 terest, to the estate of such judge or such widow, as the
31 case may be, an amount equal to the difference between

- 32 the sums contributed to the fund by or for such judge and
33 the amount of such retirement benefits and annuities paid
34 to him and his widow.

CHAPTER 24

(Senate Bill No. 86—By Mr. Johnson)

[Passed February 10, 1961: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation officers of courts and their salary and expenses.

Article 12. Probation and Parole.

Section

- 5-a. Probation officers of second judicial circuit, third judicial circuit, fifth judicial circuit, twelfth judicial circuit, fourteenth judicial circuit, twenty-ninth judicial circuit and of Wayne county; salary and expenses.

Be it enacted by the Legislature of West Virginia:

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

- Section 5-a. *Probation Officers of Second Judicial Circuit, Third Judicial Circuit, Fifth Judicial Circuit, Twelfth Judicial Circuit, Fourteenth Judicial Circuit, Twenty-ninth Judicial Circuit and of Wayne County; Salary and Expenses.*—The judge of the circuit courts of the second judicial circuit, third judicial circuit, fifth judicial circuit, twelfth judicial circuit, fourteenth judicial circuit, twenty-ninth judicial circuit and of the circuit court of Wayne county in the twenty-fourth judicial circuit each is authorized to appoint a court probation officer to serve dur-

11 ing the pleasure of the appointing judge, without first
12 obtaining approval of the county courts of the counties
13 of said judicial circuits and of Wayne county, respec-
14 tively, as provided in section five of this article. Such ap-
15 pointment shall be effective upon the entry of the ap-
16 pointment order in the court order book. A certified copy
17 of said order shall be delivered to the county court of each
18 of the counties concerned and said county courts, respec-
19 tively, shall arrange for and appropriate funds for pay-
20 ment of, and shall pay the salary and expenses of such
21 probation officer in a manner consistent with contribution
22 provisions of said section five. The probation officers so
23 appointed shall have and may exercise all of the powers
24 and perform all of the duties and services of probation
25 officers as provided in this article.

CHAPTER 25

(House Bill No. 213—By Mr. Brotherton)

[Passed March 10, 1961: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to robbery, attempted robbery, bank robbery, assaults in committing or attempting to commit bank robbery and the penalties for such offenses.

Article 2. Crimes against the Person.

Section

12. Robbery or attempted robbery; penalties; bank robbery and assaults in committing or attempting; penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two, chapter sixty-one of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 12. *Robbery or Attempted Robbery; Penalties;*

2 *Bank Robbery and Assaults in Committing or Attempting;*
3 *Penalties.*—If any person commit, or attempt to commit,
4 robbery by partial strangulation or suffocation, or by strik-
5 ing or beating, or by other violence to the person, or by
6 the threat or presenting of firearms, or other deadly
7 weapon or instrumentality whatsoever, he shall be guilty
8 of a felony, and, upon conviction, shall be confined in the
9 penitentiary not less than ten years. If any person com-
10 mit, or attempt to commit, a robbery in any other mode or
11 by any other means, except as provided for in the succeed-
12 ing paragraph of this section, he shall be guilty of a felony,
13 and, upon conviction, shall be confined in the penitentiary
14 not less than five nor more than eighteen years.

15 If any person (a) by force and violence, or by putting
16 in fear, feloniously takes, or feloniously attempts to take,
17 from the person or presence of another any property or
18 money or any other thing of value belonging to, or in the
19 care, custody, control, management or possession of, any
20 bank, he shall be guilty of a felony, and, upon conviction,
21 shall be confined in the penitentiary not less than ten nor
22 more than twenty years; and if any person (b), in com-
23 mitting, or in attempting to commit, any offense defined
24 in the preceding clause (a) of this paragraph, assaults any
25 person, or puts in jeopardy the life of any person by the
26 use of a dangerous weapon or device, he shall be guilty
27 of a felony, and, upon conviction, shall be confined in the
28 penitentiary not less than ten years nor more than twenty-
29 five years.

CHAPTER 26

(Senate Bill No. 133—By Mr. Gainer)

[Passed February 22, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section twenty-four-a, relating to obtaining goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

Article 3. Crimes against Property.

Section

24-a. Obtaining or attempting to obtain goods, property or service by false or fraudulent use of credit cards or other false or fraudulent means, and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Section 24-a. *Obtaining or Attempting to Obtain Goods, Property or Service by False or Fraudulent Use of Credit Cards or Other False or Fraudulent Means, and Providing Penalties Therefor.*—It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another beyond or without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

It shall be unlawful for any person knowingly to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of charges therefor.

24 The word "notice" as used in the first paragraph of this
25 section shall be construed to include either notice given in
26 person or notice given in writing to the person to whom
27 the number, card or device was issued. The sending of a
28 notice in writing by registered or certified mail in the
29 United States mail, duly stamped and addressed to such
30 person at his last known address, shall be prima facie evi-
31 dence that such notice was duly received.

32 Any person who violates any provision of this section
33 is guilty of a misdemeanor, and, upon conviction, shall be
34 punished by a fine of not less than fifty dollars nor more
35 than five hundred dollars or imprisonment for not more
36 than one year, or by both such fine and imprisonment.

CHAPTER 27

(House Bill No. 215—By Mr. Brotherton)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for forgery.

Article 4. Forgery and Crimes against the Currency.

Section

5. Forging or uttering other writing; penalty.

Be it enacted by the Legislature of West Virginia:

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

Section 5. Forging or Uttering Other Writing; Penalty.

- 2 —If any person forge any writing, other than such as is
3 mentioned in the first and third sections of this article, to

4 the prejudice of another's right, or utter or attempt to
5 employ as true such forged writing, knowing it to be
6 forged, he shall be guilty of a felony, and, upon conviction,
7 shall be confined in the penitentiary not less than one nor
8 more than ten years, or, in the discretion of the court, be
9 confined in jail not more than one year and be fined not
10 exceeding five hundred dollars.

CHAPTER 28

(House Bill No. 268—By Mr. Floyd and Mr. Wilson)

[Passed March 4, 1961: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to and prohibiting pecuniary interest of certain county officers and employees in certain contracts and services and providing penalties therefor.

Article 10. Crimes against Public Policy.

Section

15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exception; offering or giving compensation; penalties.

Be it enacted by the Legislature of West Virginia:

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

Section 15. *Pecuniary Interest of County and District Officers, Teachers and School Officials in Contracts; Exception; Offering or Giving Compensation; Penalties.*—
4 ~~It shall~~ be unlawful for any member of a county court,
5 overseer of the poor, district school officer, secretary of a
6 board of education, supervisor or superintendent, principal or teacher of public schools, or any member of any

8 other county or district board, or for any county or dis-
9 trict officer to be or become directly or indirectly, pecun-
10 iarily interested in the proceeds of any contract or service,
11 or in furnishing any supplies in the contract for, or the
12 awarding or letting of, which as such member, officer,
13 secretary, supervisor, superintendent, principal, or teacher,
14 he may have any voice, influence or control: *Provided,*
15 *however,* That nothing herein shall be construed to pre-
16 vent or make unlawful the employment of the spouse of
17 any such member, officer, secretary, supervisor, super-
18 intendent, principal or teacher as principal or teacher in
19 the public schools of any county. Any person or officer
20 named who shall violate any of the foregoing provisions
21 of this section shall be guilty of a misdemeanor, and,
22 upon conviction thereof, be fined not less than fifty nor
23 more than five hundred dollars, and may, in the discre-
24 tion of the court, be imprisoned for a period not to exceed
25 one year. In addition to the foregoing penalties, any such
26 officer shall be removed from his office and the certificate
27 or certificates of any teacher, principal, supervisor or
28 superintendent who violates any provision of this section
29 shall upon conviction thereof, be revoked immediately.
30 Any person, firm or corporation that offers or gives any
31 compensation whatever to any of the officers or persons
32 hereinbefore named or to any other person with the in-
33 tent to secure the influence, support or vote of such
34 officer or person for any contract, service, award or other
35 matter as to which any county or school district shall
36 become the paymaster, shall be guilty of a misdemeanor,
37 and, upon conviction thereof, be fined not less than five
38 hundred, nor more than twenty-five hundred dollars,
39 and, at the discretion of the court, such person or any
40 member of such firm, or, if it be a corporation, any agent
41 or officer thereof, so offering or giving such compensa-
42 tion, may, in addition to such fine, be imprisoned for a
43 period not to exceed one year.

44 The provisions of this section shall not apply to publica-
45 tions in newspapers required to be made by law.

CHAPTER 29

(House Bill No. 287—By Mr. Brotherton)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections nine and eleven of said article; and to further amend said article by adding thereto four new sections, designated sections twelve, twelve-a, twelve-b and twelve-c, relating to the form of marriage license, register of marriages, persons authorized to celebrate marriages, qualifications of a minister, priest and rabbi for celebrating marriages, judge's ritual for ceremony of marriage, minister's, priest's or rabbi's ritual for ceremony of marriage and record of marriage.

Article 1. Marriage.

Section

- 9. Form of marriage license.
- 11. Register of marriages.
- 12. Persons authorized to celebrate marriages.
- 12-a. Qualifications of minister, priest or rabbi for celebrating marriages.
- 12-b. Ritual for ceremony of marriage by judges.
- 12-c. Ritual for ceremony of marriage by minister, rabbi or priest; record of marriage.

Be it enacted by the Legislature of West Virginia:

That section twelve, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine and eleven of said article be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections twelve, twelve-a, twelve-b and twelve-c, all to read as follows:

- Section 9. *Form of Marriage License.*—The marriage
- 2 license shall be in form substantially as follows:
- 3 Marriage License.
- 4 State of West Virginia, County of _____, to-wit:

5 To any person authorized to celebrate marriages:
6 You are hereby authorized to join together in matrimony
7 and
8 Given under my hand, as clerk of the county court of
9 the county of, this ... day of, 19.....
10
11 Clerk as aforesaid.

Sec. 11. *Register of Marriages.*—The county court of
2 each county shall furnish to the clerk of such county
3 court a suitable book to be used as a register of marriages,
4 which such clerk shall keep in his office among his rec-
5 ords, and in which he shall promptly enter a complete
6 record of all matters which he is required by this article
7 to ascertain relative to the right of any person to obtain
8 a marriage license, of each marriage license issued by
9 him, and of the minister's, priest's, rabbi's, or judge's en-
10 dorsement certifying that such marriage was solemnized.
11 Such register of marriages shall be properly indexed by
12 the clerk in the names of both parties to the marriage.

Sec. 12. *Persons Authorized to Celebrate Marriages.*—
2 Any minister, priest or rabbi, who has complied with the
3 provisions of section twelve-a of this article, or a judge of
4 any court of record in this state, is authorized to celebrate
5 the rites of marriage in all the counties of the state. No
6 person, other than a minister, priest or rabbi, who has
7 complied with the provisions of section twelve-a of this
8 article, or a judge of any court of record in this state,
9 shall hereafter celebrate the rites of marriage in this state,
10 anything in any act of the Legislature or of any court to
11 the contrary, notwithstanding.

Sec. 12-a. *Qualifications of Minister, Priest or Rabbi for
Celebrating Marriages.*—When any minister, priest or
2 rabbi shall, before the circuit or county court of any county
3 in this state, or the clerk of any county court therein when
4 neither of such courts shall be in session, produce proof
5 that he is duly licensed as such, and of his being in regu-
6 lar communion with the religious society of which he is
7 a member, and give bond in the penalty of fifteen hun-
8 dred dollars, such court or clerk may make an order
9 authorizing him to celebrate the rites of marriage in all
10

11 the counties of the state: *Provided, however,* That any
12 minister, priest or rabbi who gives proof before the circuit
13 or county court of any county in this state, or the clerk of
14 any county court therein, when neither of such courts
15 shall be in session, of his ordination by his respective
16 church, denomination or synagogue, shall be exempted
17 from the giving of such bond.

Sec. 12-b. *Ritual for Ceremony of Marriage by Judges.*—

2 The ritual for the ceremony of marriages by judges of
3 courts of record in this state may be as follows: At the
4 time appointed, the persons to be married, being quali-
5 fied according to the law of the state of West Virginia,
6 standing together facing the judge, the man at the judge's
7 left hand and the woman at the right, the judge shall say:
8 "We are gathered here, in the presence of these wit-
9 nesses, to join together this man and this woman in
10 matrimony. It is not to be entered into unadvisedly but
11 discreetly, sincerely, and in dedication of life.

12 (Then shall the judge say to the man, using his chris-
13 tian name:)

14 "N., wilt thou have this woman to be thy wedded wife,
15 to live together in the bonds of matrimony? Wilt thou
16 love her, comfort her, honor and keep her in sickness and
17 in health?

18 (Then the man shall answer:)

19 "I will.

20 (Then the judge shall say to the woman, using her
21 christian name:)

22 "N., wilt thou have this man to be thy wedded husband,
23 to live together in the bonds of matrimony? Wilt thou
24 love him, comfort him, honor and keep him in sickness and
25 in health?

26 (The woman shall answer:)

27 "I will.

28 (Then may the judge say:)

29 "Who giveth this woman to be married to this man?

30 (The father of the woman, or whoever giveth her in
31 marriage, shall answer:)

32 "I do.

33 (Then the judge shall ask the man to say after him:)

34 "I, N., take thee, N., to be my wedded wife, to have
35 and to hold, from this day forward, for better, for worse,
36 for richer, for poorer, in sickness and in health, to love,
37 and to cherish, as long as life shall last, and thereto I
38 pledge thee my faith.

39 (Then the judge shall ask the woman to repeat after
40 him:)

41 "I, N., take thee, N., to be my wedded husband, to have
42 and to hold, from this day forward, for better, for worse,
43 for richer, for poorer, in sickness and in health, to love
44 and to cherish, as long as life shall last, and thereto I
45 pledge thee my faith.

46 (Then, if there be a ring, the judge shall say:)

47 "The wedding ring is an outward and visible sign—
48 signifying unto all, the uniting of this man and this wo-
49 man in matrimony.

50 (The judge then shall deliver the ring to the man to
51 put on the third finger of the woman's left hand. The man
52 shall say after the judge:)

53 "In token and pledge of the vow between us made, with
54 this ring, I thee wed.

55 (Then, if there be a second ring, the judge shall deliver
56 it to the woman to put upon the third finger of the man's
57 left hand; and the woman shall say after the judge:)

58 "In token and pledge of the vow between us made, with
59 this ring, I thee wed.

60 (Then shall the judge say:)

61 "Forasmuch as N. and N. have consented together in
62 wedlock, and have witnessed the same each to the other
63 and before these witnesses, and thereto have pledged their
64 faith each to the other, and have declared the same by
65 giving (and receiving) a ring, by virtue of the authority
66 vested in me as judge of this court, I pronounce that they
67 are husband and wife together."

Sec. 12-c. *Ritual for Ceremony of Marriage by Minister,*

2 *Rabbi or Priest; Record of Marriage.*—A minister, priest
3 or rabbi authorized to celebrate the rites of marriage shall
4 perform the ceremony of marriage according to the rites
5 and ceremonies of his religious denomination, church, or
6 synagogue and the laws of the state of West Virginia.

7 A record of each marriage performed, with the names

8 of the parties, their respective places of residence prior
9 to marriage, and the date of marriage, shall be kept by
10 the officiating minister, priest or rabbi in the permanent
11 record of the church or synagogue which he serves.

CHAPTER 30

(House Bill No. 362—By Mr. Watson)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

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

Article 4. Adoption.

Section

2. Contents of petition; age of petitioners.

Be it enacted by the Legislature of West Virginia:

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

Section 2. *Contents of Petition; Age of Petitioners.*—

2 Such petition shall set forth the name, age and place of
3 residence of the petitioner or petitioners, and of the child,
4 and the name by which the child shall be known; whether
5 such child be possessed of any property, and a full de-
6 scription of the same, if any; whether such child has
7 either father or mother, or both, and if he, she or they
8 are alive, then the name or names, and place of residence
9 of such father or mother, or if such be the fact, that the
10 same are unknown to the petitioner or petitioners.
11 The persons petitioning as aforesaid shall be at least
12 fifteen years older than the child sought to be adopted,
13 and the petition shall be duly verified according to law:

14 *Provided, however,* That when the petitioner seeks to
15 adopt a child of his or her spouse, the requirement that
16 the person petitioning be fifteen years older than the
17 child sought to be adopted shall not apply.

CHAPTER 31

(Senate Bill No. 222—Originating in the Senate
Committee on the Judiciary)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the adoption of children and adults.

Article 4. Adoption.

Section

9. Contracts limiting or restraining adoptions.

Be it enacted by the Legislature of West Virginia:

That article four, chapter forty-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 nine, to read as follows:

Section 9. *Contracts Limiting or Restraining Adoptions.*

2 —Any contract, agreement or stipulation which endeavor
3 ors to deny to any person or persons the right to petition
4 for adoption of any person, or which endeavors to alter
5 the time or manner of adoption as provided in this article,
6 is contrary to the public policy of the state and such portion
7 of any contract, agreement or stipulation is null and
8 void and of no effect.

CHAPTER 32

(Senate Bill No. 17—By Mr. Carson, Mr. President)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article eight, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to desertion or nonsupport of wife or child.

Article 8. Desertion or Nonsupport of Wife or Child.

Section

1. Offense; penalty.
3. Order for support; release on bond; forfeiture; failure to furnish bond.

Be it enacted by the Legislature of West Virginia:

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

- Section 1. *Offense; Penalty.*—Any husband who shall
- 2 without just cause, desert or wilfully neglect or refuse to
 - 3 provide for the support and maintenance of his wife, in
 - 4 destitute and necessitous circumstances, or any parent
 - 5 who shall, without lawful excuse, desert or wilfully
 - 6 neglect or refuse to provide for the support and maintenance of his or her legitimate or illegitimate child or
 - 7 children, under the age of eighteen years, in destitute and
 - 8 necessitous circumstances, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not
 - 9 exceeding five hundred dollars, or imprisoned in the
 - 10 county jail not exceeding one year, with hard labor, or
 - 11 both, and the court may also direct that the husband or
 - 12 parent work on the public highways of this state or where
 - 13 he may obtain employment, and the court may order such
 - 14 payments to be made to the wife, guardian, custodian or
 - 15 trustee of such minor child or children as he may deem

18 necessary for their maintenance, taking into considera-
19 tion the station in life of such husband or parent and any
20 other circumstances surrounding the case: *Provided*,
21 *however*, That if such husband or parent be regularly
22 employed or obtain regular employment, the court in its
23 discretion may order such husband or parent to remain in
24 such employment, and it shall be the duty of the sheriff to
25 arrange for a continuation of said employment without
26 interruption, and whenever such husband or parent is not
27 employed, and between the hours or periods of employ-
28 ment, he or she shall be confined in jail unless the court
29 shall otherwise direct. The earnings of such husband or
30 parent shall be collected by the sheriff, and from such
31 earnings the sheriff shall pay the board and reasonably
32 necessary personal expenses of such husband or parent,
33 both inside and outside the jail, and, to the extent directed
34 by the court, pay the balance to the wife, guardian, cus-
35 todian or trustee of such minor child or children, as the
36 court may order.

Sec. 3. *Order for Support; Release on Bond; Forfeiture;*
2 *Failure to Furnish Bond.*—The justice of the peace or
3 other court before whom such conviction is had may, in
4 lieu of the penalty herein provided, or in addition thereto,
5 having regard to the circumstances and financial ability
6 or earning capacity of the defendant, require the defend-
7 ant to pay a certain sum periodically to the wife or to the
8 guardian, curator, custodian or trustee of such wife, child
9 or children, which shall be subject to change from time
10 to time as circumstances may require, and may release
11 the defendant upon his or her entering into a bond with
12 good surety in the penalty of not less than five hundred
13 dollars. The condition of the bond shall be to make pay-
14 ments as aforesaid to the wife, guardian, curator, custodian
15 or trustee of such wife, child or children until the further
16 order of the court or until the child or children arrive at
17 the age of eighteen years, and to appear before the court in
18 case default be made in the payment of such sums; and in
19 case the defendant fails to make such payments, the
20 justice or other court may order the rearrest of the de-
21 fendant, and proceed with the trial under the original

22 charge, or sentence him or her under the original charge,
23 as the case may be, and in the case of forfeiture of the
24 bond herein provided for, and enforcement thereof, the
25 sum recovered may, in the discretion of the court wherein
26 the forfeiture is enforced, be paid in whole or in part to
27 the wife or to the guardian, curator, custodian or trustee
28 of such wife or minor child or children, as the court may
29 order; and in event the accused is unable to furnish bond
30 as set out in this article, then the judge of the circuit court
31 may direct that the defendant work on the public high-
32 ways of this state or where he may obtain employment,
33 and the judge of such court may order such payments to
34 be made to the wife, guardian, custodian or trustee of
35 such minor child or children as he may deem necessary
36 for their maintenance, taking into consideration the sta-
37 tion in life of the defendant and any other circumstances
38 surrounding the case.

CHAPTER 33

(House Bill No. 159—By Mr. Bias and Mr. Harmon)

[Passed March 1, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-d, relating to changing the name of Marshall College to Marshall University.

Article 2. State Board of Education.

Section

13-d: Marshall University.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto a new section, designated section thirteen-d, to read as follows:

Section 13-d. *Marshall University*.—Notwithstanding
2 any other provision of law, the state educational institu-
3 tion located at Huntington, West Virginia, previously
4 known as Marshall College shall, after the effective date
5 of this section, be known as Marshall University, and any
6 reference to said Marshall College contained in law shall
7 be construed to apply to Marshall University; and this
8 university shall remain under the supervision and control
9 of the state board of education.

CHAPTER 34

(Com. Sub. for House Bill No. 469—Originating in the House
Committee on Humane Institutions)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-e; and to repeal article four, chapter twenty-six of said code, all relating to the home for aged and infirm colored men and women and the real property used for such purpose.

Article 2. State Board of Education.

Section

13-e. Transfer of property for the use of Marshall University.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen-e; and that article four, chapter twenty-six of said code be repealed, to read as follows:

Section 13-e. *Transfer of Property for the Use of*
2 *Marshall University*.—On and after the first day of July,
3 one thousand nine hundred sixty-one, supervision and

4 control of all of the real property, heretofore administered
5 by the commissioner of public institutions containing one
6 hundred eighty-four and one-half acres, more or less,
7 located in Guyandotte district, Cabell county, and known
8 as the "West Virginia Home for Aged and Infirm Colored
9 Men and Women" shall be transferred to the supervision
10 and control of the state board of education. The state
11 board of education shall be authorized to use the property
12 for any purpose it may deem advisable in connection with
13 the educational program of Marshall University.

CHAPTER 35

(Senate Bill No. 59—By Mr. Moreland)

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-f, relating to the establishment of a supplemental retirement plan for persons employed by the state board of education at institutions of higher education under its control.

Article 2. State Board of Education.

Section

13-f. Payroll deductions for employees participating in supplemental retirement plan; authority to match employee contributions.

Be it enacted by the Legislature of West Virginia:

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

Section 13-f. *Payroll Deductions for Employees Participating in Supplemental Retirement Plan; Authority to Match Employee Contributions.*—The state board of edu-

4 cation shall have the authority to contract for retirement
5 benefits for any or all persons employed by the board at
6 institutions of higher education under its control to sup-
7 plement the benefits such employees will receive under
8 the state teachers' retirement system. The board shall
9 have the authority to make additional periodic deductions
10 from the salary payments due such employees in the
11 amount they are required to contribute for the supple-
12 mental retirement plan selected by the board. The addi-
13 tional deductions shall not exceed five per cent of the
14 salary of employees thirty through thirty-four years of
15 age, six per cent of the salary of those thirty-five through
16 forty-four years of age, and seven and one-half per cent
17 of the salary of those forty-five years of age and above,
18 and shall not cover any portion of an employee's salary
19 which is covered by the state teachers' retirement system
20 or the United States social security act, as amended. The
21 board is further authorized, by way of additional compen-
22 sation to such employees, to pay an amount equal to the
23 contributions of such employees into such retirement plan
24 from funds appropriated for personal services at the sev-
25 eral institutions of higher education under its control.
26 Each participating employee shall have a full and imme-
27 diate vested interest in the retirement and death benefits
28 accrued from all the moneys paid into such supplemental
29 retirement plan for his benefit. Upon proper requisition
30 of the board, the auditor shall periodically issue a war-
31 rant, payable as specified in the requisition, for the total
32 contributions so withheld from the salaries of all partici-
33 pating employees and for the board's matching funds.

CHAPTER 36

(Senate Bill No. 26—By Mr. McKown)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chap-
ter eighteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the qualifications and compensation of county superintendents of schools.

Article 4. County Superintendent of Schools.

Section

4. Compensation.

Be it enacted by the Legislature of West Virginia:

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

Section 4. *Compensation.*—On or before the first day of
2 May of the year in which the superintendent is appointed,
3 the board shall fix the annual salary of the superintendent
4 for the period of appointment for the term beginning on
5 the first day of July following. The annual salary of such
6 superintendent shall not be less than five thousand dollars
7 nor more than ten thousand dollars, both exclusive of
8 state aid: *Provided, however,* That in counties having a
9 population in excess of sixty-five thousand, the board
10 may pay salaries in excess of ten thousand dollars. The
11 board shall pay the salary from the general current ex-
12 pense fund of the district.

—C—

CHAPTER 37

(Senate Bill No. 45—By Mr. McKown)

[Passed February 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to meetings,

quorum, employment and assignment of teachers, compensation of members and affiliation with state and national organizations by the county board of education.

Article 5. District Board of Education.

Section

4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations.
-

Be it enacted by the Legislature of West Virginia:

That section four, 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:

Section 4. *Meetings; Quorum; Employment and Assignment of Teachers; Compensation of Members; Affiliation with State and National Associations.*—The board shall meet on the first Monday of July and the first and third Tuesdays in August and at such other times as the board may fix upon its records. At any meeting as authorized above and in compliance with the provisions of article four of this chapter, the board may employ such qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. On or before the first Monday in May the superintendent shall furnish to the board a list of those probationary and continuing contract teachers to be considered for transfer and subsequent assignment for the next ensuing school year.

Special meetings may be called by the president or any three members, but no business shall be transacted other than that designated in the call.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members shall receive compensation at the rate of twenty dollars per meeting attended. But they shall not receive pay for more than twenty-four meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an

27 itemized sworn statement, for all necessary traveling ex-
28 penses incurred on official business, at the order of the
29 board.

30 When, by a majority vote of its members, a county
31 board of education deems it a matter of public interest,
32 such board may join the West Virginia school board asso-
33 ciation and the national school board association, and may
34 pay such dues as may be prescribed by said associations
35 and approved by action of the respective county boards.
36 Membership dues and actual traveling expense of board
37 members for attending meetings of the West Virginia
38 school board association may be paid by their respective
39 county boards of education out of funds available to meet
40 actual expenses of the members, but no allowance shall be
41 made except upon sworn itemized statements.

CHAPTER 38

(House Bill No. 404—By Mr. Frazer)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to sick-leave compensation for school bus drivers.

Article 7. Teachers.

Section

2-b. Sick leave for school bus drivers.

Be it enacted by the Legislature of West Virginia:

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

Section 2-b. *Sick Leave for School Bus Drivers.*—The
2 county board of education may establish and maintain

3 in its annual budget a separate fund to be known as the
4 "bus drivers' sick-leave fund." In allocating money to
5 this fund, the board shall provide and maintain a reason-
6 able reserve to meet the cost of any accumulated sick
7 leave.

8 Any county board of education establishing such a fund
9 shall provide that any full-time school bus driver em-
10 ployed by such board shall be entitled to at least five days
11 of sick leave per year, accumulative to a total of twenty
12 school days. Money allocated to the sick-leave fund shall
13 be used to pay the salary of any full-time bus driver who
14 loses time from assigned duties due to personal accident,
15 sickness, death in the immediate family, or any other
16 emergency cause that may be authorized or approved by
17 the board.

18 All sick-leave benefits shall be paid at the end of the
19 school year. If funds budgeted for sick-leave benefits are
20 insufficient to pay the amount due, the per diem salaries
21 for all bus drivers claiming sick-leave benefits shall be
22 reduced proportionately. The board is authorized to pre-
23 scribe such other regulations as it may deem necessary.

CHAPTER 39

(Senate Bill No. 27—By Mr. Carson, Mr. President, and
Mr. McKown)

[Passed February 14, 1961: in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article seven, chap-
ter eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the payment of
teachers and other employees.

Article 7. Teachers.

Section

5. Payment of teachers and other employees.

Be it enacted by the Legislature of West Virginia:

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

Section 5. *Payment of Teachers and Other Employees.*—

2 All teachers and employees whose salaries are payable
3 out of the school current fund shall be paid for their serv-
4 ices by orders drawn upon the sheriff or treasurer and duly
5 signed by the president and secretary of the board in ac-
6 cordance with the following provisions:

7 Notwithstanding any other provisions of this chapter,
8 all teachers duly contracted shall be paid in not fewer
9 than nine nor more than twelve monthly pays, beginning
10 after the fifteenth day of September of each fiscal year,
11 and on a fixed and regularly designated date for the cal-
12 endar month. In the event a teacher is not paid the full
13 salary earned in the fiscal year in which the work is per-
14 formed, the unpaid amount may be paid during July and
15 August of the following fiscal year. Adjustments for time
16 loss due to absence may be made in the next pay check
17 following such time loss.

18 The board may withhold the monthly salary of any
19 teacher or employee until he has made the reports re-
20 quired by the board or the state superintendent.

CHAPTER 40

(Senate Bill No. 48—By Mr. McKown)

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section thirty-three, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirement of state superintendent to keep master file of qualified teachers.

Article 7. Teachers.

Section

1. Master file of qualified teachers; repeal of statute.

Be it enacted by the Legislature of West Virginia:

Section 1. *Master File of Qualified Teachers; Repeal of*
2 *Statute.*—Section thirty-three, article seven, chapter
3 eighteen of the code of West Virginia, one thousand nine
4 hundred thirty-one, as enacted by chapter seventy, acts
5 of the Legislature, regular session, one thousand nine hun-
6 dred fifty-seven, requiring the state superintendent of
7 schools to keep a master file of qualified teachers, is here-
8 by repealed.

CHAPTER 41

(Com. Sub. for House Bill No. 75—Originating in the
House Committee on Finance)

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, three, four, eleven and twelve, relating to public school support.

Article 9-a. State and County Support of Schools.

Section

1. Determination of a school support program.
3. Total state foundation program.
4. Computation of local share; appraisal and assessment of property.
11. County basic foundation program; total amount of state aid.
12. Supplemental instructional support.

Be it enacted by the Legislature of West Virginia:

That article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections one, three, four, eleven and twelve to read as follows:

- Section 1. *Determination of a School Support Program.*
2 —The intent of this article is to provide a plan of finan-
3 cial support for the public schools of the state to be

4 known as the West Virginia public school support pro-
5 gram, and to fix statutorily both state and county respon-
6 sibility for the financing of the same. The said school
7 support program shall be comprised of three parts; name-
8 ly, basic foundation support, supplemental instructional
9 support, and general matching support as funds and pro-
10 visions are established for such. In enacting this plan,
11 the Legislature has in mind the following purposes:

12 (1) To provide a basic foundation support for the free
13 schools of the state that will assure a minimum educa-
14 tional base for all children and youth irrespective of
15 where they may live.

16 (2) To provide, through state funds, a supplement to
17 the instructional program that will aid in getting and
18 keeping competent teachers, that will assure a standard
19 term of nine and one-half months, such to be used for in-
20 creasing classroom instruction time, for inservice im-
21 provement of teacher competency, and for meeting other
22 school needs.

23 (3) To provide a state-county matching plan that will
24 encourage counties to increase and to maintain their lo-
25 cal support over and beyond that required for basic foun-
26 dation needs.

Sec. 3. *Total State Foundation Program.*—The total
2 basic foundation school support program for any year
3 shall be the appropriation for state aid to schools avail-
4 able for distribution during that year, plus the total local
5 share for all counties in the state, determined for that year
6 as provided in this article, after providing for those allo-
7 cations established in section twelve of this article. The
8 amount of the total state foundation program so deter-
9 mined shall be used to meet the requirements of each
10 successive division or step of the allocation formula pro-
11 vided for in this article, in the order of priority stated in
12 the following sections. Whenever the amount applicable
13 to any division or step is insufficient to meet fully the
14 stated requirement, the amount for each unit of cost in
15 such division or step shall be reduced proportionately,
16 and the remaining divisions or steps of the formula shall
17 necessarily be disregarded.

Sec. 4. *Computation of Local Share; Appraisal and Assessment of Property.*—On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred per cent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half per cent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner, and shall deduct therefrom five per cent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty per cent of the amount so determined shall be added to the ninety-seven and one-half per cent of public utility taxes computed as provided above and this total shall be the local share of the particular county.

The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all non-utility real property and of all nonutility personal property which shall be based upon true and actual value as set forth in article three, chapter eleven of this code.

In determining the value of personal property—other than all machinery, equipment, furniture and fixtures of any industrial plant, mine, quarry or installation and of any commercial, industrial, or professional establishment—the tax commissioner shall prescribe accepted methods of determining such values. The tax commissioner shall in accordance with such methods determine the value of such property.

For the purpose of appraising commercial, industrial, and professional properties the tax commissioner after

42 consultation with the county court shall employ a com-
43 petent property appraisal firm or firms which appraisals
44 shall be under his supervision and direction.

45 In making or causing to be made such appraisal, the
46 tax commissioner shall employ such assistants as avail-
47 able appropriations will permit and shall prescribe and
48 use such accepted methods and procedures for checking
49 property values and determining the amount of property
50 in the several classes of property provided by law as are
51 customarily employed for appraisal purposes.

52 Such appraisal of all said property in the several coun-
53 ties shall be completed prior to the first day of January,
54 one thousand nine hundred sixty-four. Each year after
55 the completion of the property appraisal in a county the
56 tax commissioner shall maintain the appraisal by making
57 or causing to be made such surveys, examinations, audits,
58 maps and investigations of the value of the several classes
59 of property in each county which should be listed and
60 taxed under the several classifications, and shall deter-
61 mine the appraised value thereof. On the basis of in-
62 formation so ascertained, the tax commissioner shall an-
63 nually revise his reports to the Legislature and to the
64 state board concerning such appraisals, such reports to
65 be made not later than the first day of January of each
66 year.

67 As information from such appraisal of property in a
68 county under the provisions of this section becomes avail-
69 able for a district, municipality and county, the tax com-
70 missioner shall notify the county court and the assessor
71 of said county that such information is available and shall
72 make available to said county court and assessor all data,
73 records, and reports or other information relating to said
74 work, along with a list of any properties in said district,
75 municipality, and county which are entered on the assess-
76 ment rolls but for which no appraisal has been made,
77 a list of any properties which were appraised but which
78 can not be found on the assessment rolls and a list of
79 all properties carried on the assessment rolls which have
80 not been identified on the maps. Said lists shall set forth
81 the name of the owner and a description of the property
82 and the reason, if known, for its failure to have been

83 entered on the assessment rolls or to have been appraised
84 or to have been identified on the map, as the case may be.

85 As such appraisal of property in a county, under this
86 section, is completed to the extent that a total valuation
87 for each class of property can be determined, such ap-
88 praisal shall be delivered to the assessor and the county
89 court, and in each assessment year commencing after
90 such appraisal is so delivered and received, the county
91 assessor and the county court, sitting as a board of equali-
92 zation and review, shall use such appraised valuations
93 as a basis for determining the true and actual value for
94 assessment purposes of the several classes of property.
95 The total assessed valuation in each of the four classes of
96 property shall be not less than fifty per cent nor more than
97 one hundred per cent of the appraised valuation of each
98 said class of property.

99 The determination of appraised values in those counties
100 where the full appraisal has not been completed as de-
101 fined above and delivered to the assessor and the county
102 court prior to the first day of the assessment year shall
103 be continued by the tax commissioner on the annual spot
104 survey basis. Beginning with the fiscal year one thou-
105 sand nine hundred sixty and for each year thereafter
106 until the full survey is so completed and delivered in a
107 county, the assessed value in each of the four classes of
108 property in such county shall be not less than fifty per
109 cent nor more than one hundred per cent of the appraised
110 valuation of each said class of property as determined
111 by the last previous statewide report of the tax commis-
112 sioner: *Provided, however,* That in those counties where
113 the full appraisal has not been completed and delivered,
114 as aforesaid, to the county assessor and the county court
115 prior to the first day of the assessment year, the require-
116 ments of this paragraph shall be satisfied if:

117 (1) The total tax yield from the four classes of property
118 based upon the allowable school levy rates defined in sec-
119 tion two of this article equals or exceeds the amount re-
120 quired to meet the local share as provided in this section;
121 or

122 (2) For the assessment year one thousand nine hun-
123 dred sixty-one, the assessor has increased the total valua-

124 tions of property in an amount not less than thirty-three
125 and one-third per cent of the difference between the total
126 assessed valuations for the assessment year one thousand
127 nine hundred sixty and the valuations required by this
128 section; or

129 (3) For the assessment year one thousand nine hun-
130 dred sixty-two, the assessor has increased the total valua-
131 tions of property in an amount not less than fifty per cent
132 of the difference between the total assessed valuations
133 of property for the assessment year one thousand nine
134 hundred sixty-one and the total valuations for such class
135 required by this section; or

136 (4) For the assessment year one thousand nine hun-
137 dred sixty-three, the assessor has increased the total val-
138 uation of property so that the same meet the requirements
139 of this section.

140 Whenever in any year a county assessor and/or county
141 court shall fail or refuse to comply with the provisions
142 of this section in setting the valuations of property for
143 assessment purposes in any class or classes of property
144 in the county, the state tax commissioner shall review
145 the valuations for assessment purposes made by the county
146 assessor and the county court and shall direct the county
147 assessor and county court to make such corrections in the
148 valuations as may be necessary so that they shall comply
149 with the requirements of chapter eleven and of this sec-
150 tion, and the tax commissioner shall enter the county
151 and fix the assessments at the required ratios. Refusal of
152 the assessor and/or the county court to make such cor-
153 rections shall constitute grounds for removal from office.

154 In any year in which the total assessed valuation of a
155 county shall fail to meet the minimum requirements
156 above set forth, the county court of such county shall
157 allocate for such year to the county board of education
158 from the tax levies allowed to the county court a sufficient
159 portion of its levies as will, when applied to the valuations
160 for assessment purposes of such property in the county,
161 provide a sum of money equal to the differences between
162 the amount of revenue which will be produced by appli-
163 cation of the allowable school levy rates defined in section
164 two of this article upon the valuations for assessment pur-

165 poses of such property and the amount of revenue which
166 would be yielded by the application of such levies to fifty
167 per cent of the total of appraised valuations of such prop-
168 erty. In the event the county court shall fail or refuse
169 to make the reallocation of levies as provided for herein,
170 the county board of education, the tax commissioner, the
171 state board of school finance, or any other interested party,
172 shall have the right to enforce the same by writ of man-
173 damus in any court of competent jurisdiction.

174 In conjunction with and as a result of the appraisal
175 herein set forth the tax commissioner shall have the power
176 and it shall be his duty, to establish a permanent records
177 system for each county in the state, consisting of:

178 (1) Tax maps of the entire county drawn to scale or
179 aerial maps, which maps shall indicate all property and
180 lot lines, set forth dimensions or areas, indicate whether
181 the land is improved, and identify the respective parcels
182 or lots by a system of numbers, or symbols and numbers,
183 whereby the ownership of such parcels and lots can be
184 ascertained by reference to the property record cards and
185 property owners' index;

186 (2) Property record cards arranged geographically ac-
187 cording to the location of property on the tax maps, which
188 cards shall set forth the location and description thereof,
189 the acreage or dimensions, description of improvements,
190 if any, the owner's name, address and date of acquisition,
191 the purchase price, if any, set forth in the deed of acqui-
192 sition, the amount of tax stamps, if any, on the deed, the
193 assessed valuation, and the identifying number or symbol
194 and number, shown on the tax map;

195 (3) Property owners' index consisting of an alpha-
196 betical listing of all property owners, setting forth brief
197 descriptions of each parcel or lot owned, and cross-indexed
198 with the property record cards and the tax map.

199 The tax commissioner is hereby authorized and em-
200 powered to enter into such contracts as may be necessary,
201 and for which funds may be available, to establish the
202 permanent records system herein provided for, or may
203 through his staff and employees, prepare and complete
204 such system.

205 The cost of conducting the appraisal herein provided
206 for shall be borne jointly by the state and the several

207 counties in the following manner and terms: There shall
208 be appropriated from the general revenue fund not less
209 than one million five hundred thousand dollars for each
210 fiscal year until sufficient funds have been appropriated
211 to complete the appraisal in all counties of the state.

212 Each county shall furnish, through its county court, not
213 more than ten per cent of the cost of such appraisal or
214 reappraisal and permanent records system for such
215 county. Such county costs may be paid over a period of
216 three years with the approval of the tax commissioner.
217 If a county has employed a professional appraisal firm
218 to conduct an appraisal or reappraisal of all or a part of
219 nonutility property within the past five years, and such
220 appraisal, or any other appraisal or reappraisal has been
221 or shall have been accepted by the tax commissioner,
222 credit shall be allowed to such county for its portion of
223 the statewide appraisal costs and any contract with ap-
224 praisal firm or firms shall not be made for appraisal or re-
225 appraisal of such property except and unless requested by
226 such county, or shown to be necessary by the tax com-
227 missioner: *Provided*, That until the completion of the ap-
228 appraisal herein provided for in all of the fifty-five counties
229 of the state, the local share for each county shall be deter-
230 mined on the basis of the annual spot survey of property
231 valuations by the tax commissioner in this state, as here-
232 tofore provided, but in no way shall this be interpreted
233 as affecting the assessment provisions set forth above;
234 however, in any county having accepted and used ap-
235 praised valuations developed by an appraisal made by the
236 tax commissioner or accepted by him as a basis in deter-
237 mining the true and actual valuation for assessment pur-
238 poses, the county board of education may annually re-
239 quest that the local share shall be that which was in effect
240 under the last applicable spot survey preceding such ac-
241 ceptance and usage and until the full reappraisal has been
242 completed in all counties the board of school finance shall
243 comply with such request: *Provided further*, That the
244 sample pieces of property employed in making the annual
245 spot survey shall be used by the tax commissioner for this
246 purpose only and shall be open to none other than the
247 Legislature by its request through a resolution approved

248 by both the senate and the house of delegates and as
249 otherwise provided in this section; however, if on the basis
250 of the current statewide report of the tax commissioner
251 available the first day of January of each year, it appears
252 that any county shall not have complied with the require-
253 ments regarding the ratio of assessed valuations, the tax
254 commissioner shall notify the assessor and the county
255 court of each such county and, if they file a request for re-
256 view of the appraisals which they believe to be in error,
257 he shall review the appraisal of such properties and shall
258 correct such errors as he may discover in such individual
259 appraisal and/or in the preparation or recording of the
260 report by the tax commissioner. The corrected figures
261 shall be reported to the board of school finance prior to
262 the first day of June and shall be used in determining the
263 allocations of state aid to the county boards of education
264 for the subsequent fiscal year.

265 The county assessor and the county court shall comply
266 with the provisions of chapter eleven of this code in de-
267 termining the true and actual value of property for assess-
268 ment purposes and shall not arbitrarily use a direct per-
269 centage application to the appraised valuations (whether
270 complete appraisal or spot survey) of any class of prop-
271 erty or property within a class for such purpose.

272 The provisions of this section shall not be construed to
273 alter or repeal in any manner the provisions of chapter
274 eleven of this code, but shall be construed in pari materia
275 therewith, and compliance with this section by the asses-
276 sor and county court shall be considered, pro tanto, as
277 compliance with said chapter eleven.

Sec. 11. *County Basic Foundation Program; Total*
2 *Amount of State Aid.*—The basic foundation school pro-
3 gram for each county for the fiscal year shall be the sum
4 of the amounts allowed the county under the formula
5 provisions of sections four to ten, inclusive, of this ar-
6 ticle. Prior to the first day of July in each year, the
7 state board shall determine the basic foundation program
8 for each county for the next fiscal year. The state share
9 of the basic foundation program of the county shall be
10 the difference between the total cost of said basic foun-
11 dation and the computed local share for said county; ex-

12 cept, however, that no county shall receive less than fifty
13 per cent of the computed cost of the foundation program
14 of such county.

15 The total state aid to the county shall be the sum of
16 (1) the computed state share of basic foundation support,
17 (2) the state share under the provisions of supplemental
18 instructional support, and (3) the state share for general
19 matching provisions when such are established. After
20 such computation is completed, the state board shall im-
21 mediately certify to each county board the amount of
22 state aid allocated to the county for the next fiscal year,
23 subject to any qualifying provisions of this article.

Sec. 12. *Supplemental Instructional Support.*—The
2 provisions of this section are designed to strengthen the
3 instructional program by attracting to and keeping qual-
4 ified teachers in the public school classrooms, by extend-
5 ing the employment term of teachers so as to provide
6 time for more class instruction, time for inservice im-
7 provement in teacher competency, time for teacher-pupil-
8 parent conferences. This phase of the school support
9 program shall be computed on a teacher-unit basis.

10 Beginning with the fiscal year one thousand nine hun-
11 dred sixty-one, the allocation of state funds for supple-
12 mental instructional support shall be the sum of (a) an
13 amount as is necessary to meet the instructional require-
14 ments established by the fifty-second Legislature; (b) one
15 hundred eighty dollars times the number of teachers em-
16 ployed in the county for the preceding year for the pur-
17 pose of providing a base-pay increase of twenty dollars
18 per month for such teachers; and (c) one eighteenth of the
19 total teacher cost, based on the legal minimum salary scale
20 plus the salary supplement provided for in item (b) of
21 this paragraph, of all employed teachers for the purpose
22 of extending the employment of such teachers by adding
23 two weeks employment.

CHAPTER 42

(Senate Bill No. 63—By Mr. Moreland)

[Passed March 2, 1961: In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-d, relating to the disposition of tuition fees and charges collected at the university medical center.

Article 11. West Virginia University.

Section

- 4-d. Disposition of tuition fees collected at West Virginia University medical center.

Be it enacted by the Legislature of West Virginia:

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

Section 4-d. *Disposition of Tuition Fees Collected at West Virginia University Medical Center.*—All tuition fees collected at West Virginia university medical center from students in the schools of medicine, medical technology, dentistry, dental technology, nursing, and pharmacy, together with all special tuition and registration fees charged for postgraduate short courses, institutes, and seminars conducted by the medical center, shall be paid into the special medical school fund heretofore created in the state treasury under the provisions of section two, article nineteen, chapter eleven of this code, and shall be used solely for the construction, maintenance, and operation of the schools of medicine, medical technology, dentistry, dental technology, nursing, and pharmacy.

CHAPTER 43

(Senate Bill No. 60—By Mr. Moreland)

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section five-c, relating to the establishment of a supplemental retirement plan for employees of the board of governors of West Virginia University.

Article 11. West Virginia University.

Section

5-c. Payroll deductions for employees participating in supplemental retirement plan; authority to match employee contributions.

Be it enacted by the Legislature of West Virginia:

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

Section 5-c. *Payroll Deductions for Employees Participating in Supplemental Retirement Plan; Authority to Match Employee Contributions.*—The board of governors of West Virginia University shall have the authority to contract for retirement benefits for any or all of its employees to supplement the benefits such employees will receive under the state teachers' retirement system. The board shall have the authority to make additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five per cent of the salary of employees thirty through thirty-four years of age, six per cent of the salary of those thirty-five through forty-four years of age, and seven and one-half per cent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee's salary which is covered by the state teachers' retirement system or the United States social security act, as amended. The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into such retirement plan from funds appropriated for personal services at the

24 university and at Potomac State College. Each partici-
25 pating employee shall have a full and immediate vested
26 interest in the retirement and death benefits accrued from
27 all the moneys paid into such supplemental retirement
28 plan for his benefit. Upon proper requisition of the board,
29 the auditor shall periodically issue a warrant, payable as
30 specified in the requisition, for the total contributions so
31 withheld from the salaries of all participating employees
32 and for the board's matching funds.

CHAPTER 44

(Senate Bill No. 69—By Mr. Moreland)

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of the board of governors of West Virginia University to establish, operate, and maintain graduate centers.

Article 11. West Virginia University.

Section

10-a. Establishment and operation of graduate centers.

Be it enacted by the Legislature of West Virginia:

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

Section 10-a. *Establishment and Operation of Graduate Centers.*—The board of governors is hereby authorized and empowered to establish, maintain and operate one or more graduate centers of science, engineering, commerce or business administration at such place or places within

6 the state as may be deemed advisable. For these purposes
7 it is hereby authorized and empowered to enter into
8 written contracts or agreements with any person for sup-
9 port of such graduate centers, and to accept gifts, dona-
10 tions, other contributions, facilities and aid in establish-
11 ing and operating the same. The board shall provide for
12 the charging and collection at each graduate center of
13 such enrollment, tuition, registration and other fees or
14 charges as the board may deem necessary to provide for
15 the maintenance and operation of the center on a self-
16 supporting basis.

17 All such fees, charges, contributions, gifts and donations
18 paid or collected at any graduate center shall be paid
19 into a special fund and shall be used solely for the mainte-
20 nance and operation of the graduate center at which they
21 were collected.

22 No such graduate center shall be established unless
23 and until the board of governors shall determine that all
24 facilities, fees, contributions, charges, gifts and donations
25 paid, collected or available shall be sufficient to meet and
26 discharge all costs of the establishment, operation and
27 maintenance of such center. In the event the fees, charges,
28 gifts, donations, contributions, facilities and other aid will
29 not be sufficient to provide for the continued operation
30 and maintenance of such center on a self-supporting basis,
31 as hereinbefore set forth, the board of governors shall
32 close the same at the end of the semester in which such
33 determination shall be made.

CHAPTER 45

(Senate Bill No. 64—By Mr. Moreland)

[Passed February 28, 1961: In effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-b, relating to the employment of security of-

ficers and to their powers and duties on premises under the jurisdiction of the board of governors.

Article 11. West Virginia University.

Section

10-b. Security officers; powers and duties.

Be it enacted by the Legislature of West Virginia:

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

Section 10-b. Security Officers; Powers and Duties.—

2 The board of governors is hereby authorized to appoint
3 bona fide residents of this state to act as security officers
4 upon any premises owned or leased by the state of West
5 Virginia and under the jurisdiction of the board, subject
6 to the conditions and restrictions hereinafter imposed.
7 Before entering upon the performance of his duties as
8 such security officer in any county, each person so ap-
9 pointed shall qualify therefor in the same manner as is
10 required of constables by the taking and filing of an oath
11 of office as required by article one, chapter six of this code,
12 and by the posting of an official bond as required by article
13 two, chapter six of this code. No such person shall have
14 authority to carry a gun or any other dangerous weapon
15 until he shall have obtained a license therefor in the
16 manner prescribed by section two, article seven, chapter
17 sixty-one of this code: *Provided, however,* That no
18 enrolled student of West Virginia University shall be
19 appointed as a security officer.

20 It shall be the duty of any person so appointed and
21 qualified to preserve law and order on any premises under
22 the jurisdiction of the board to which he may be assigned
23 by the president of the university. For this purpose he
24 shall as to offenses committed on such premises have and
25 may exercise all the powers and authority and shall be
26 subject to all the responsibilities of regularly elected
27 constables of the county. The assignment of security

28 officers to any premises under the jurisdiction of the board
29 shall not be deemed to supersede in any way the authority
30 or duty of other peace officers to preserve law and order
31 on such premises.

32 The salary of all such security officers shall be paid by
33 the board. The board may also furnish such security
34 officers with an official uniform and shall furnish and re-
35 quire each such officer while on duty to wear a metallic
36 shield with an appropriate inscription and to carry cre-
37 dentials certifying to his identity and to his authority as
38 a security officer.

39 The board of governors may at its pleasure revoke the
40 authority of any such officer by filing a notice to that effect
41 in the office of the clerk of each county in which his oath
42 of office was filed, and in the case of officers licensed to
43 carry a gun or other dangerous weapons by notifying the
44 clerk of the circuit court of the county in which the
45 license therefor was granted.

CHAPTER 46

(House Bill No. 124—By Mr. Speaker, Mr. Singleton)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section twenty-five, relating to the authority of the board of governors to acquire, by lease or purchase, construct, maintain, operate and finance automobile parking facilities.

Article 11. West Virginia University.

Section

25. Acquisition and operation of parking facilities.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter eighteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section twenty-five, to read as follows:

Section 25. *Acquisition and Operation of Parking Facilities.*—The board of governors is hereby authorized to construct, maintain and operate automobile parking facilities on the campus or other areas under its jurisdiction for use by students, faculty, staff and visitors. Such facilities shall be open to use on such terms and subject to such reasonable regulations as may be prescribed by the board. A summary of the regulations shall be posted conspicuously in each parking area.

The board shall have authority to charge fees for use of the parking facilities. All moneys collected for such use shall be paid into a special fund. The moneys in such fund shall be used first to pay the cost of maintaining and operating such facilities, but any excess not needed for this purpose may be used for the acquisition of property by lease or purchase and the construction thereon of additional parking facilities. Any money in the fund not needed immediately for the acquisition, construction, maintenance, or operation of such facilities may be temporarily invested by the board in the state sinking fund.

Whenever a vehicle is parked on any university parking facility in violation of the posted regulations, the board shall have authority to remove the vehicle, by towing or otherwise, to an established garage or parking lot for storage until called for by the owner or his agent. The owner shall be liable for the reasonable cost of such removal and storage, and until payment of such cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. Notice to this effect shall be posted conspicuously in each parking area. The garage or parking lot operator may enforce his lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

CHAPTER 47

(Senate Bill No. 66—By Mr. Moreland)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-aa, relating to the award of graduate scholarships by the board of governors.

Article 1-a. Fees and Other Money Collected at State Institutions.

Section

1-aa. Professional school scholarships entitling recipients to waiver of fees; conditions and limitations.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-five 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-aa, to read as follows:

Section 1-aa. *Professional School Scholarships Entitling*

2 *Recipients to Waiver of Fees; Conditions and Limitations.*

3 —In addition to the scholarships heretofore authorized
4 for undergraduate study by the provisions of section one-a
5 of this article, the board of governors is hereby authorized
6 and empowered to establish from time to time scholar-
7 ships for study in the school of medicine, the school of
8 dentistry, the college of law, and the graduate school,
9 entitling the recipients to waiver of enrollment, tuition,
10 registration, and other fees, subject to the following con-
11 ditions and limitations:

12 (1) The number of such scholarships in effect at any
13 one time shall not exceed six for each class in the school
14 of medicine, five for each class in the school of dentistry,

15 four for each class in the college of law, and four for grad-
16 uate students in social work. Such scholarships may be
17 for a period of time not to exceed eight semesters of study
18 in medicine and dentistry, six semesters of study in law,
19 and five semesters of study in graduate social work.

20 (2) Each such scholarship shall entitle the recipient to
21 waiver of such enrollment, tuition, registration and other
22 fees as may be prescribed by the board.

23 (3) The board shall make rules governing the award
24 of such scholarships, the issuance and cancellation of cer-
25 tificates entitling the recipients to the benefits thereof,
26 the use of such scholarships by the recipients, and the
27 rights and duties of the recipients in respect to such
28 scholarships. Such rules shall not be inconsistent with
29 the provisions of this section.

30 (4) The awarding of such scholarships shall be entered
31 in the minutes of the meeting of the board, and the board
32 shall file with the state auditor and the director of the
33 budget division a certified copy of the rules governing
34 the award of such scholarships and a list of the names of
35 the recipients thereof.

CHAPTER 48

(House Bill No. 123—By Mr. Speaker, Mr. Singleton)

[Passed March 6, 1961: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section one-c, authorizing the governing boards of state educational institutions to excuse students from the payment of tuition, registration, and other fees, whenever such students are enrolled in an educational program, the cost of which is wholly financed from nonstate funds except for indirect costs of administration and other overhead expenses.

Article 1-a. Fees and Other Money Collected at State Institutions.**Section**

- 1-c. Authority to excuse students in certain educational programs from payment of tuition, registration, and other enrollment fees.

Be it enacted by the Legislature of West Virginia:

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

- Section 1-c. *Authority to Excuse Students in Certain Educational Programs from Payment of Tuition, Registration and Other Enrollment Fees.*—Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal agency or from any foundation, corporation, or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state educational institution administering such program shall have the authority to excuse all students enrolled in such program from the payment of tuition, registration and other enrollment fees.

CHAPTER 49

(House Bill No. 189—By Mr. Floyd and Mr. Wilson)

[Passed March 3, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections six-a and six-b, relating to the retention and expenditure of tuition and fees by the governing board of each state educational institution and establishing

joint agreements and financial support of community branch colleges.

Article 1-a. Fees and Other Money Collected at State Institutions.

Section

- 6-a. Fees and money derived from two-year branches of state supported institutions of higher education; expenditure of same.
6-b. Joint establishment and administration of two-year branch colleges by two or more governmental divisions.
-

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections six-a and six-b, to read as follows:

Section 6-a. *Fees and Money Derived from Two-Year Branches of State Supported Institutions of Higher Education; Expenditure of Same.*—The governing board of each state educational institution may fix fees to be charged students enrolling in approved branches of state supported institutions of higher education, retaining same in a revolving account for the full and complete support of all costs of said branch or branches. Such branches shall be approved by the governing board and shall not exceed two-year liberal arts and terminal education and adult education programs approved by the board and shall be wholly self-supporting; admission, grades, and general operation of said branch shall be in accordance with rules and regulations of the governing board. A memorandum of agreement may be entered into between the governing board and the county board of education and other local governmental bodies for use of local plant facilities and/or local contributions toward the cost and maintenance of said approved branch.

Sec. 6-b. *Joint Establishment and Administration of Two-year Branch Colleges by Two or More Governmental Divisions.*—Any county board of education, county court, municipal corporation, or any two of them, may jointly establish with an approved educational institution, an

6 approved two-year branch college offering transfer, term-
7 inal, technical and adult vocational programs. The respec-
8 tive governmental bodies operating such a two-year term-
9 inal branch and community college may provide by agree-
10 ment among themselves all matters connected with such
11 programs, subject to the approval of the state board of
12 education, and determine what items of cost and expense
13 shall be paid by each.

CHAPTER 50

(Senate Bill No. 68—By Mr. Moreland)

[Passed February 23, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-c, relating to the imposition, collection, and expenditure of fees or charges for special services and special programs provided by educational institutions.

Article 1-a. Fees and Other Money Collected at State Institutions.

Section

6-c. Fees or charges for special services and programs provided by educational institutions; collection and expenditure thereof.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-five 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-c, to read as follows:

Section 6-c. *Fees or Charges for Special Services and Programs Provided by Educational Institutions; Collection and Expenditure Thereof.*—The governing board of each state educational institution shall have authority to provide special services and special programs at such institutions and may fix and collect special fees or charges

7 therefor. Such special services and special programs may
8 include any one or more of the following:

9 (1) The conduct of music camps and band, orchestra,
10 or voice clinics for secondary school students or other
11 youth groups, summer tutoring programs for primary and
12 secondary school students, speech therapy clinics and
13 services, education and psychological testing programs,
14 student guidance programs, and statistical studies and
15 calculations by electronic computer service.

16 (2) Rental of lockers or other storage facilities and the
17 maintenance and operation of parking facilities for use
18 by students, faculty, staff, and visitors.

19 (3) Rental of musical recordings, educational films,
20 slides, and other audio-visual aids.

21 (4) Microfilming or other mechanical reproduction of
22 records and non-copyrighted library reference materials.

23 (5) Institutes, conferences, workshops, postgraduate
24 and refresher noncredit courses, and any other special
25 program or special service customarily provided by insti-
26 tutions of higher education.

27 All fees or charges collected for any such special serv-
28 ices or programs shall be paid into a special fund and shall
29 be expended solely for the maintenance, operation, and
30 support of such services and programs.

31 Whenever any such special service is provided by one
32 school, division or department of an educational institu-
33 tion for the benefit of any other school, division or de-
34 partment in the same institution, the cost shall be paid
35 by the school, division or department requesting the serv-
36 ice and shall be deposited and expended as provided
37 above.

CHAPTER 51

(House Bill No. 382—By Mr. Speaker, Mr. Singleton)

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing the board of governors of West Virginia
University to pay into a special fund the proceeds of any

sale by the board to the city of Morgantown of the university hangar site and the hangar and other buildings thereon at the Morgantown airport, and specifying the purposes for which such proceeds may be used by the board.

West Virginia University.

Section

1. Use and disposition of proceeds of sale of university hangar site and buildings.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Use and Disposition of Proceeds of Sale of University Hangar Site and Buildings.*—In the event of the sale by the board of governors of West Virginia University to the city of Morgantown of the university hangar site and the hangar and other buildings thereon, being part of the university agronomy farm adjacent to the Morgantown airport, the board shall have the authority to deposit the proceeds of such sale in a special fund in the state treasury and to use such fund only for the purpose of defraying the cost of constructing new facilities on another site to be provided at the airport by the city of Morgantown.

CHAPTER 52

(Com. Sub. for Senate Bill No. 115—Originating in the Senate Committee on the Judiciary)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and thirteen, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to publication, printing and delivery of ballots, and delivery of election supplies to election commissioners.

Article 4. Nomination or Election of Candidates at Primaries.**Section**

9. Publication and printing of ballots; delivery of ballots to election commissioners.
13. Procuring ballots and other primary supplies.

Be it enacted by the Legislature of West Virginia:

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

Section 9. *Publication and Printing of Ballots; Delivery of Ballots to Election Commissioners.*—At least twenty-five days before the holding of any primary election, the ballot commissioners of each county shall prepare from the lists and certificates of announcements, as provided in this article, a sample official primary ballot for each party, placing thereon the names of all the candidates of the respective political party, and, as the case may be, the nonpartisan candidates to be voted for at such primary election. They shall publish the same in two issues of a newspaper of general circulation published in such county and representing such party, if one there be; if not, then in some other newspaper published in such county in two issues of such newspaper.

The ballot commissioners shall cause official ballots, to not more than one and one-fifth times the number of registered voters in each election precinct of each political party, to be printed and delivered to them for holding the primary election, and the ballot commissioners shall deliver to the election commissioner ballots for each party to the number of one and one-twentieth times the number of registered voters of such party in the election precinct.

Sec. 13. *Procuring Ballots and Other Primary Supplies.*
—It shall be the duty of the board of ballot commissioners to appoint one or more of the commissioners of election at each precinct of the county to attend at the offices of the clerks of the circuit and county courts, as the case may be, at least three days before each primary election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials

9 for conducting the election at the respective precincts.
10 The commissioner or commissioners shall be given ballots
11 for each party to the number of one and one-twentieth
12 times the number of registered voters of such party in
13 the election precinct, and shall be given ballot boxes,
14 election booths, and other supplies required to be fur-
15 nished for conducting the election at such precinct. The
16 respective clerk shall take from the election commissioner
17 or commissioners receipts for supplies and materials re-
18 ceived, which receipts shall be filed in the office of the
19 clerk of the county court or circuit court, as the case may
20 be. It shall be the duty of such commissioner or com-
21 missioners to attend at such clerk's office and to receive
22 such ballots and all other election supplies to be used in
23 conducting the election at the respective precinct and to
24 deliver the same, with the seal of all sealed packages
25 unbroken, at his election precinct in time to open the
26 election. Such commissioner or commissioners, if they
27 perform such services, shall receive the per diem and
28 mileage rate prescribed by law for this service. At the
29 same time there shall be delivered to an election commis-
30 sioner designated by the ballot commissioners the proper
31 poll books bearing on each page the following headings:
32 "Names of Persons Voting for Candidates at Precinct
33 No. in the district of in the county
34 of on this the day of,
35 19...; of the party." Such poll books shall
36 have columns headed respectively: "Number of Voters",
37 "Signature of Voters" and "Challenge of Voter", and shall
38 have under the heading "Number of Voters" numbers, in
39 consecutive order, to the bottom of each page. Forms for
40 oaths of commissioners of election and poll clerks shall
41 be written or printed on the poll books, and one copy of
42 such poll books shall be supplied at each voting precinct
43 for each political party appearing on the primary ballot.
44 In case any commissioner of election so appointed shall
45 fail to appear at the offices of the clerks of such county
46 and circuit courts, by the close of the second day prior
47 to any election, as required by this section, the board of
48 ballot commissioners, or the chairman thereof, shall forth-
49 with dispatch a special messenger to the commissioners

50 of election of each respective precinct with the ballots,
51 registration records, ballot boxes, poll books and other
52 supplies for such precinct. Such messenger shall be
53 allowed two dollars for his time, and five cents a mile for
54 the distance necessary to be traveled by him, and shall
55 promptly report to the clerks of the circuit and county
56 courts, respectively, and file with such clerks the receipts
57 of the person to whom he delivered such ballots and other
58 supplies, and his affidavit, stating when and to whom he
59 delivered them.

3

CHAPTER 53

(Senate Bill No. 116—By Mr. Gainer)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of ballots and packages of ballots to be printed and delivered for use in a general election.

Article 5. Conducting Election; Ascertaining and Certifying the Result.

Section

5. Number of ballots; packages.

Be it enacted by the Legislature of West Virginia:

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

Section 5. *Number of Ballots; Packages.*—The board of
2 ballot commissioners shall, for each general election to be
3 held in their county, cause to be printed official ballots to
4 not more than one and one-fifth times the number of reg-

5 istered voters in the county. The ballots so printed shall
6 be wrapped and tied in packages, one for each precinct
7 in their county, containing ballots to the number of one
8 and one-twentieth times the number of registered voters
9 in such precinct. Each package of ballots shall be sealed
10 with wax, and plainly marked with the number of ballots
11 therein, the name of the magisterial district, and the num-
12 ber of the voting place therein, to which it is intended
13 to be sent. The names of the ballot commissioners shall
14 also be endorsed thereon.

CHAPTER 54

(Senate Bill No. 94—By Mr. Hedrick)

{Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.}

AN ACT to amend and reenact sections twenty-one, twenty-two and twenty-three, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conducting of elections and particularly to the giving of assistance to blind voters.

Article 5. Conducting Election; Ascertaining and Certifying the Result.

Section

21. Assistance to voter unable to write; blindness of voter.
22. Number of persons in booths; time for voting.
23. Number of voters allowed in election room; persons not permitted within five feet of booth or ballot box.

Be it enacted by the Legislature of West Virginia:

That sections twenty-one, twenty-two and twenty-three, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 21. *Assistance to Voter Unable to Write; Blind-*
2 *ness of Voter.*—Any person whose registration record in-

3 dicates his inability to write may declare his choice of
4 candidates to the poll clerks who, in the presence of the
5 voter and in the presence of each other, shall prepare the
6 ballot for voting in the manner hereinbefore provided,
7 and, on request, shall read over to such voter the names of
8 candidates on the ballot as so prepared; or such voter may
9 require the poll clerks to indicate to him the relative posi-
10 tion of the names of the candidates on the ballot, where-
11 upon the voter shall retire to one of the booths or com-
12 partments to prepare his ballot in the manner herein-
13 before provided, or may request the poll clerks to mark
14 the ballot as he directs.

15 If the voter is unable to mark his ballot because of
16 blindness and the voter presents a doctor's certificate as to
17 such blindness, and if he shall so elect, said poll clerks
18 shall both withdraw, and permit the voter to be assisted
19 by any person designated by such voter.

Sec. 22. Number of Persons in Booth; Time for Voting.

2 —Not more than one person shall be permitted to occupy
3 any booth or compartment at one time; and no person
4 shall remain in or occupy a booth or compartment longer
5 than may be necessary to prepare his ballot, and in no
6 event longer than five minutes. No voter, or person offer-
7 ing to vote, shall hold any conversation or communication
8 with any person other than the poll clerks or commission-
9 ers of election, while in the election room. This section
10 shall not apply to persons rendering assistance to blind
11 voters as provided in section twenty-one of this article.

Sec. 23. Number of Voters Allowed in Election Room; Persons Not Permitted within Five Feet of Booth or Ballot Box.—Not more than one voter for each compartment
3 or booth at the precinct shall be allowed in the election
4 room at one time, and no person shall approach nearer
5 than five feet to any booth or compartment while the elec-
6 tion is being held, except the voters to prepare their bal-
7 lots, or the poll clerks when called on by a voter to assist
8 in the preparation of his ballot, and no person, other than
9 election officers and voters engaged in receiving, prepar-
10 ing and depositing their ballots, shall be permitted to be
11 within five feet of any ballot box, except by authority of
12

- 13 the board of election commissioners, and then only for the
14 purpose of keeping order and enforcing the law. This sec-
15 tion shall not apply to persons rendering assistance to blind
16 voters as provided in section twenty-one of this article.

CHAPTER 55

(Senate Bill No. 211—By Mr. Carson, Mr. President)

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal section twenty-one, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section three, article one; sections two, seven, ten and sixteen, article five; sections four, ten and eleven, article six; and section eight, article seven, all of said chapter twenty-one-a, and to further amend article six of said chapter by adding thereto a new section, designated section four-a, all relating to unemployment compensation.

Article

1. Department of Employment Security.
 5. Employer Coverage and Responsibility.
 6. Employee Eligibility; Benefits.
 7. Claim Procedure.
-

Be it enacted by the Legislature of West Virginia:

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

Article 1. Department of Employment Security.**Section****3. Definitions.**

Section 3. *Definitions.*—As used in this chapter, unless the context clearly requires otherwise:

“Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

“Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.

“Average annual payroll” means the average of the last three annual payrolls of an employer.

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual’s benefit year.

“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

“Base period wages” means wages paid to an individual during the base period by all his base period employers.

“Benefit year” with respect to an individual means the one-year period beginning with the day on which he filed a valid claim for benefits, and thereafter the one-year period beginning with the day on which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

“Benefits” means the money payable to an individual with respect to his unemployment.

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty, or December thirty-one, or the

37 equivalent thereof as the director may by regulation
38 prescribe.

39 "Computation date" means June thirty of the year im-
40 mediately preceding the January one on which an em-
41 ployer's contribution rate becomes effective.

42 "Director" means the employment security director.

43 "Employing unit" means an individual, or type of
44 organization, including any partnership, association, trust,
45 estate, joint stock company, insurance company, corpora-
46 tion (domestic or foreign), or the receiver, trustee in
47 bankruptcy, trustee or successor thereof, or the legal
48 representative of a deceased person, which has on Janu-
49 ary first, one thousand nine hundred thirty-five, or subse-
50 quent thereto, had in its employ one or more individuals
51 performing service within this state.

52 "Employer" means an employing unit which for some
53 portion of a day, not necessarily simultaneously, in each
54 of twenty different calendar weeks, which weeks need
55 not be consecutive, within either the current calendar
56 year, or the preceding calendar year, has had in employ-
57 ment four or more individuals irrespective of whether
58 the same individuals were or were not employed on each
59 of such days, or who or which is or becomes a liable
60 employer under any federal unemployment tax act, or
61 who or which has acquired the organization, trade or
62 business, or substantially all the assets thereof, of an em-
63 ploying unit which at the time of such acquisition was
64 an employer subject to this chapter.

65 "Employment", subject to the other provisions of this
66 section, means:

67 (1) Service, including service in interstate commerce,
68 performed for wages or under any contract of hire, written
69 or oral, express or implied.

70 (2) The term "employment" shall include an indi-
71 vidual's entire service, performed within or both within
72 and without this state if: (a) The service is localized in
73 this state; or (b) the service is not localized in any state
74 but some of the service is performed in this state and
75 (i) the base of operations, or, if there is no base of opera-
76 tions, then the place from which such service is directed

77 or controlled, is in this state; or (ii) the base of operations
78 or place from which such service is directed or controlled
79 is not in any state in which some part of the service is
80 performed but the individual's residence is in this state.

81 (3) Service not covered under paragraph two of this
82 subsection and performed entirely without this state,
83 with respect to no part of which contributions are re-
84 quired and paid under an unemployment compensation
85 law of any other state or of the federal government, shall
86 be deemed to be employment subject to this chapter if
87 the individual performing such services is a resident of
88 this state and the director approves the election of the
89 employing unit for whom such services are performed
90 that the entire service of such individual shall be deemed
91 to be employment subject to this chapter.

92 (4) Service shall be deemed to be localized within a
93 state, if: (a) The service is performed entirely within
94 such state; or (b) the service is performed both within
95 or without such state, but the service performed without
96 such state is incidental to the individual's service within
97 this state. For example, is temporary or transitory in
98 nature or consists of isolated transactions.

99 (5) Services performed by an individual for wages
100 shall be deemed to be employment subject to this chapter
101 unless and until it is shown to the satisfaction of the di-
102 rector that: (a) Such individual has been and will con-
103 tinue to be free from control or direction over the per-
104 formance of such services, both under his contract of
105 service and in fact; and (b) such service is either outside
106 the usual course of the business for which such service is
107 performed or that such service is performed outside of
108 all the places of business of the enterprise for which such
109 service is performed; and (c) such individual is custom-
110 arily engaged in an independently established trade,
111 occupation, profession or business.

112 (6) All service performed by an officer or member of
113 the crew of an American vessel (as defined in section
114 three hundred five of an act of Congress entitled "Social
115 Security Act Amendment of 1946", approved August
116 tenth, one thousand nine hundred forty-six) on or in

117 connection with such vessel, provided that the operating
118 office, from which the operations of such vessel operating
119 on navigable waters within or within and without the
120 United States is ordinarily and regularly supervised,
121 managed, directed and controlled, is within this state.

122 Included and Excluded Service. If the services per-
123 formed during one half or more of any pay period by an
124 employee for the person employing him constitute em-
125 ployment, all the services of such employee for such
126 period shall be deemed to be employment; but if the
127 services performed during more than one half of any
128 such pay period by an employee for the person employing
129 him do not constitute employment, then none of the
130 services of such employee for such period shall be deemed
131 to be employment.

132 The term "employment" shall not include:

133 (1) Services performed in the employ of this state or
134 any political subdivision thereof, or any instrumentality
135 of this state or its subdivisions.

136 (2) Service performed directly in the employ of an-
137 other state, or its political subdivisions.

138 (3) Service performed in the employ of the United
139 States or an instrumentality of the United States exempt
140 under the constitution of the United States from the pay-
141 ments imposed by this law, except that to the extent that
142 the Congress of the United States, shall permit states to
143 require any instrumentalities of the United States to make
144 payments into an unemployment fund under a state un-
145 employment compensation law, all of the provisions of
146 this law shall be applicable to such instrumentalities, and
147 to service performed for such instrumentalities, in the
148 same manner, to the same extent and on the same terms as
149 to all other employers, employing units, individuals, and
150 services: *Provided*, That if this state shall not be certi-
151 fied for any year by the secretary of labor under section
152 one thousand six hundred three (c) of the Federal In-
153 ternal Revenue Code, the payments required of such
154 instrumentalities with respect to such year shall be re-
155 funded by the director from the fund in the same manner
156 and within the same period as is provided in section

157 nineteen, article five of this chapter, with respect to
158 payments erroneously collected.

159 (4) Service performed after June thirty, one thou-
160 sand nine hundred thirty-nine, with respect to which
161 unemployment compensation is payable under the Rail-
162 road Unemployment Insurance Act (52 Stat. 1094), and
163 service with respect to which unemployment benefits are
164 payable under an unemployment compensation system
165 for maritime employees established by an act of Congress.
166 The director may enter into agreements with the proper
167 agency established under such an act of Congress to pro-
168 vide reciprocal treatment to individuals who, after ac-
169 quiring potential rights to unemployment compensation
170 under an act of Congress, or who have, after acquiring
171 potential rights to unemployment compensation under an
172 act of Congress, acquired rights to benefit under this
173 chapter. Such agreements shall become effective ten days
174 after such publications as comply with the general rules
175 of the department.

176 (5) Agricultural Labor. For the purposes of this chap-
177 ter, the term "agricultural labor" includes all services
178 performed—

179 On a farm, in the employ of any person, in connection
180 with cultivating the soil, or in connection with raising or
181 harvesting any agricultural or horticultural commodity,
182 including the raising, shearing, feeding, caring for, train-
183 ing, and management of livestock, bees, poultry, and fur-
184 bearing animals and wildlife;

185 In the employ of the owner or tenant or other operator
186 of a farm, in connection with the operation, management,
187 conservation, improvement, or maintenance of such farm
188 and its tools and equipment, or in salvaging timber or
189 clearing land of brush and other debris left by a hurri-
190 cane, if the major part of such service is performed on
191 a farm;

192 In connection with the production or harvesting of
193 maple syrup or maple sugar or any agricultural com-
194 modity, or in connection with the raising or harvesting of
195 mushrooms, or in connection with the hatching of poultry,
196 or in connection with the ginning of cotton, or in connec-

197 tion with the operation or maintenance of ditches, canals,
198 reservoirs, or waterways used exclusively for supplying
199 and storing water for farming purposes; or

200 In handling, planting, drying, packing, packaging,
201 processing, freezing, grading, storing, or delivering to
202 storage or to market or to a carrier for transportation to
203 market, any agricultural or horticultural commodity; but
204 only if such service is performed as an incident to ordinary
205 farming operations or, in the case of fruits and vegetables,
206 as an incident to the preparation of such fruits or vege-
207 tables for market. The provisions of this paragraph shall
208 not be deemed to be applicable with respect to service
209 performed in connection with commercial canning or
210 commercial freezing or in connection with any agricul-
211 tural or horticultural commodity after its delivery to a
212 terminal market for distribution for consumption.

213 As used in this definition, the term "farm" includes
214 stock, dairy, poultry, fruit, fur-bearing animal, and truck
215 farm, plantations, ranches, or other similar land areas or
216 structures used primarily for the raising of any agricultu-
217 ral or horticultural commodity, and orchards, but the term
218 "farm" does not include greenhouses and nurseries.

219 (6) Domestic service in a private home.

220 (7) Service performed by an individual in the employ
221 of his son, daughter, or spouse.

222 (8) Service performed by a child under the age of
223 twenty-one years in the employ of his father or mother.

224 (9) Service performed in the employ of an employing
225 unit organized and operated exclusively for religious,
226 charitable, scientific, literary, or educational purposes or
227 for prevention of cruelty to children or animals, no part
228 of the net earnings of which inure to the benefit of any
229 private shareholder or individual.

230 (10) Service as an officer or member of a crew of an
231 American vessel, performed on or in connection with such
232 vessel, if the operating office, from which the operations of
233 the vessel operating on navigable water within or without
234 the United States are ordinarily and regularly supervised,
235 managed, directed and controlled, is without this state.

236 Notwithstanding the foregoing exclusions from the def-
237 inition of "employment", services, except agricultural
238 labor and domestic service in a private home, shall be
239 deemed to be in employment if with respect to such serv-
240 ices a tax is required to be paid under any federal law
241 imposing a tax against which credit may be taken for
242 contributions required to be paid into a state unemploy-
243 ment compensation fund.

244 "Employment office" means a free employment office
245 or branch thereof, operated by this state, or any free pub-
246 lic employment office maintained as a part of a state con-
247 trolled system of public employment offices in any other
248 state.

249 "Fund" means the unemployment compensation fund
250 established by this chapter.

251 "Payments" means the money required to be paid or
252 that may be voluntarily paid into the state unemploy-
253 ment compensation fund as provided in article five of
254 this chapter.

255 "Separated from employment" means, for the purposes
256 of this chapter, the total severance whether by quitting,
257 discharge, or otherwise, of the employer-employee re-
258 lationship.

259 "State" includes, in addition to the states of the United
260 States, Puerto Rico and the District of Columbia.

261 "Total and partial unemployment":

262 (1) An individual shall be deemed totally unemployed
263 in any week in which such individual is separated from
264 employment for an employing unit and during which he
265 performs no services and with respect to which no wages
266 are payable to him.

267 (2) An individual who has not been separated from
268 employment shall be deemed to be partially unemployed
269 in any week in which due to lack of work he performs no
270 services and with respect to which no wages are payable
271 to him, or in any week in which due to lack of full-time
272 work wages payable to him are less than his weekly bene-
273 fit amount plus ten dollars.

274 "Wages" means all remuneration for personal service,
275 including commissions and bonuses and the cash value

276 of all remuneration in any medium other than cash: *Pro-*
277 *vided*, That the term "wages" shall not include:

278 (1) That part of the remuneration which, after re-
279 muneration equal to three thousand dollars has been paid
280 to an individual by an employer with respect to employ-
281 ment during any calendar year, is paid after December
282 thirty-one, one thousand nine hundred thirty-nine, and
283 prior to January one, one thousand nine hundred forty-
284 seven, to such individual by such employer with respect
285 to employment during such calendar year; or that part
286 of the remuneration which, after remuneration equal to
287 three thousand dollars with respect to employment after
288 one thousand nine hundred thirty-eight has been paid
289 to an individual by an employer during any calendar year
290 after one thousand nine hundred forty-six, is paid to such
291 individual by such employer during such calendar year,
292 except that for the purposes of sections one, ten, eleven
293 and thirteen of article six of this chapter, all remuner-
294 ation earned by an individual in employment shall be
295 credited to the individual and included in his computa-
296 tion of base period wages: *Provided*, That notwithstand-
297 ing the foregoing provisions, on and after January one,
298 one thousand nine hundred sixty-two, the term "wages"
299 shall not include:

300 That part of the remuneration which, after remuner-
301 ation equal to three thousand six hundred dollars has
302 been paid to an individual by an employer with respect
303 to employment during any calendar year, is paid during
304 any calendar year after one thousand nine hundred sixty-
305 one, except that for the purposes of sections one, ten,
306 eleven and thirteen of article six of this chapter, all
307 remuneration earned by an individual in employment
308 shall be credited to the individual and included in his
309 computation of base period wages: *And provided further*,
310 That the remuneration paid to an individual by an em-
311 ployer with respect to employment in another state or
312 other states upon which contributions were required of
313 and paid by such employer under an unemployment
314 compensation law of such other state or states shall be
315 included as a part of the remuneration equal to the
316 amounts of three thousand dollars or three thousand six

317 hundred dollars herein referred to. In applying such
318 limitation on the amount of remuneration that is taxable
319 an employer shall be accorded the benefit of all or any
320 portion of such amount which may have been paid by its
321 predecessor or predecessors: *Provided, however,* That if
322 the definition of the term "wages" as contained in sec-
323 tion 3306 (b) of the Internal Revenue Code of 1954 is
324 amended (a) effective prior to January one, one thousand
325 nine hundred sixty-two, to include remuneration in excess
326 of three thousand dollars, or (b) effective on or after
327 January one, one thousand nine hundred sixty-two, to
328 include remuneration in excess of three thousand six
329 hundred dollars, paid to an individual by an employer
330 under the Federal Unemployment Tax Act during any
331 calendar year, wages for the purposes of this definition
332 shall include remuneration paid in a calendar year to an
333 individual by an employer subject to this article or his
334 predecessor with respect to employment during any cal-
335 endar year up to an amount equal to the amount of re-
336 muneration taxable under the Federal Unemployment
337 Tax Act;

338 (2) The amount of any payment made after December
339 thirty-one, one thousand nine hundred fifty-two (includ-
340 ing any amount paid by an employer for insurance or
341 annuities, or into a fund, to provide for any such pay-
342 ment), to, or on behalf of, an individual in its employ, or
343 any of his dependents, under a plan or system established
344 by an employer which makes provision for individuals in
345 its employ generally (or for such individuals and their
346 dependents), or for a class or classes of such individuals
347 (or for a class or classes of such individuals and their de-
348 pendents), on account of (A) retirement, or (B) sick-
349 ness or accident disability, or (C) medical or hospitali-
350 zation expenses in connection with sickness or accident
351 disability, or (D) death;

352 (3) Any payment made after December thirty-one,
353 one thousand nine hundred fifty-two, by an employer to
354 an individual in its employ (including any amount paid
355 by an employer for insurance or annuities, or into a fund,
356 to provide for any such payment) on account of retire-
357 ment;

358 (4) Any payment made after December thirty-one,
359 one thousand nine hundred fifty-two, by an employer on
360 account of sickness or accident disability, or medical or
361 hospitalization expenses in connection with sickness or
362 accident disability, to, or on behalf of, an individual in
363 its employ after the expiration of six calendar months
364 following the last calendar month in which such indi-
365 vidual worked for such employer;

366 (5) Any payment made after December thirty-one,
367 one thousand nine hundred fifty-two, by an employer to,
368 or on behalf of, an individual in its employ or his bene-
369 ficiary (A) from or to a trust exempt from tax under
370 section 165 (a) of the Federal Internal Revenue Code at
371 the time of such payment unless such payment is made to
372 such individual as an employee of the trust as remunera-
373 tion for services rendered by such individual and not
374 as a beneficiary of the trust, or (B) under or to an annuity
375 plan which, at the time of such payment, meets the re-
376 quirements of section 165 (a) (3), (4), (5) and (6) of
377 the Federal Internal Revenue Code;

378 (6) The payment by an employer (without deduction
379 from the remuneration of the individual in its employ)
380 of the tax imposed upon an individual in its employ
381 under section 1400 of the Federal Internal Revenue Code;

382 (7) Remuneration paid by an employer after Decem-
383 ber thirty-one, one thousand nine hundred fifty-two, in
384 any medium other than cash to an individual in its em-
385 ploy for service not in the course of the employer's trade
386 or business;

387 (8) Any payment (other than vacation or sick pay)
388 made by an employer after December thirty-one, one
389 thousand nine hundred fifty-two, to an individual in its
390 employ after the month in which he attains the age of
391 sixty-five, if he did not work for the employer in the
392 period for which such payment is made;

393 (9) Payments, not required under any contract of
394 hire, made to an individual with respect to his period of
395 training or service in the armed forces of the United
396 States by an employer by which such individual was
397 formerly employed.

398 Gratuities customarily received by an individual in the
399 course of his employment from persons other than his
400 employing unit shall be treated as wages paid by his
401 employing unit, if accounted for and reported to such
402 employing unit.

403 The reasonable cash value of remuneration in any
404 medium other than cash shall be estimated and de-
405 termined in accordance with rules prescribed by the
406 director.

407 "Week" means a calendar week, ending at midnight
408 Saturday, or the equivalent thereof, as determined in ac-
409 cordance with the regulations prescribed by the director.

410 "Weekly benefit rate" means the maximum amount of
411 benefit an eligible individual will receive for one week of
412 total unemployment.

413 "Year" means a calendar year or the equivalent thereof,
414 as determined by the director.

Article 5. Employer Coverage and Responsibility.

Section

2. Duration.
7. Joint and separate accounts.
10. Experience ratings; decreased rates.
16. Collection of payments.

Section 2. *Duration.*—Except as otherwise provided in
2 section three of this article, an employing unit shall cease
3 to be an employer subject to this chapter only as of the
4 first day of any calendar year and only if it files with the
5 director not later than January thirty-first of such year,
6 a written application for termination of coverage, as of
7 such first day of January, and the director finds that there
8 were no twenty different days, each day being in a differ-
9 ent calendar week within the preceding calendar year,
10 within which such employing unit had four or more indi-
11 viduals in employment subject to this chapter: *Provided,*
12 *however,* That the director may for good cause extend the
13 time for filing application for termination of coverage,
14 effective as of the first day of the next succeeding quarter
15 after the application is approved.

Sec. 7. *Joint and Separate Accounts.*—(1) The director
2 shall maintain a separate account for each employer, and

3 shall credit his account with all contributions paid by
4 him prior to July first, one thousand nine hundred sixty-
5 one. On and after July first, one thousand nine hundred
6 sixty-one, the director shall maintain a separate account
7 for each employer, and shall credit said employer's ac-
8 count with all contributions of such employer in excess
9 of seven tenths of one per cent of taxable wages: *Pro-*
10 *vided*, That any adjustment made in an employer's ac-
11 count after the computation date shall not be used in the
12 computation of the credit balance of an employer until
13 the next following computation date: *Provided further*,
14 That nothing in this chapter shall be construed to grant
15 an employer or individual in his service prior claims or
16 rights to the amounts paid by him into the fund, either
17 on his own behalf or on behalf of such individuals. The
18 account of any employer which has been inactive for a
19 period of four consecutive calendar years shall be termi-
20 nated for all purposes.

21 (2) Benefits paid to an eligible individual for total un-
22 employment beginning after the effective date of this act
23 shall be charged to the account of the last employer with
24 whom he has been employed as much as thirty working
25 days, whether or not such days are consecutive: *Provided*,
26 That no employer's account shall be charged with benefits
27 paid to any individual who has been separated from a non-
28 covered employing unit in which he was employed as
29 much as thirty days, whether or not such days are con-
30 secutive: *And provided further*, That benefits paid to an
31 eligible individual for partial unemployment beginning
32 after the effective date of this act shall be charged to the
33 account of the claimant's current employer.

34 (3) The director shall, for each calendar year here-
35 after, classify employers in accordance with their actual
36 experience in the payment of contributions on their own
37 behalf and with respect to benefits charged against their
38 accounts, with a view of fixing such contribution rates as
39 will reflect such experiences. For the purpose of fixing
40 such contribution rates for each calendar year, the books
41 of the department shall be closed on July thirty-one of
42 the preceding calendar year, and any contributions there-

43 after paid, as well as benefits thereafter paid with respect
44 to compensable weeks ending on or before June thirty
45 of the preceding calendar year, shall not be taken into
46 account until the next annual date for fixing contribution
47 rates: *Provided, however,* That if an employer has failed
48 to furnish to the director on or before July thirty-one of
49 such preceding calendar year the wage information for
50 all past periods necessary for the computation of the con-
51 tribution rate, such employer's rate shall be, if it is imme-
52 diately prior to such July thirty-one, less than two and
53 seven-tenths per cent, increased to two and seven-tenths
54 per cent, and if such employer's rate immediately prior
55 to such July thirty-one is more than two and seven-tenths
56 per cent and he fails to furnish such wage information,
57 his rate shall be increased to three and three-tenths per
58 cent: *Provided further,* That any payment made or any
59 information necessary for the computation of a reduced
60 rate furnished on or before the termination of an exten-
61 sion of time for such payment or reporting of such infor-
62 mation granted pursuant to a regulation of the director
63 authorizing such extension, shall be taken into account
64 for the purposes of fixing contribution rates: *Provided*
65 *further,* That when the time for filing any report or mak-
66 ing any payment required hereunder falls on Saturday,
67 Sunday, or a legal holiday, the due date shall be deemed
68 to be the next succeeding business day: *Provided further,*
69 That whenever through mistake or inadvertence erroneous
70 credits or charges are found to have been made to or
71 against the reserve account of any employer, the rate
72 shall be adjusted as of January one of the calendar year
73 in which such mistake or inadvertence is discovered; but
74 payments made under any rate assigned prior to January
75 one of such year shall not be deemed to be erroneously
76 collected.

77 (4) The director may prescribe regulations for the
78 establishment, maintenance, and dissolution of joint ac-
79 counts by two or more employers, and shall, in accord-
80 ance with such regulations and upon application by two
81 or more employers to establish such an account, or to
82 merge their several individual accounts in a joint account.

83 maintain such joint account as if it constituted a single
84 employer's account.

Sec. 10. *Experience Ratings; Decreased Rates.*—On and

2 after January one, one thousand nine hundred fifty-four,
3 after the requirements of section nine have been complied
4 with, an employer's payment shall remain two and seven-
5 tenths per cent until:

6 (1) There have elapsed thirty-six consecutive months
7 immediately preceding the computation date throughout
8 which an employer's account was chargeable with bene-
9 fits.

10 (2) His payments credited to his account for all past
11 years exceed the benefits charged to his account by an
12 amount equal to at least the per cent of his average an-
13 nual pay roll as shown in column B of Table I. His rate
14 shall be the amount appearing in column C of Table I on
15 line with the percentage in column B.

16 The director shall determine an employer's compliance
17 with these requirements.

18

TABLE I

Col. A.	Col. B.	Col. C.
Rate Class	Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges	Employer's Rate
19 (1)	5.5	2.5
20 (2)	6.5	2.3
21 (3)	7.0	2.1
22 (4)	7.5	1.9
23 (5)	8.0	1.7
24 (6)	8.5	1.5
25 (7)	9.0	1.3
26 (8)	9.5	1.1
27 (9)	10.0	0.9
28 (10)	10.5	0.7
29 (11)	11.0	0.5
30 (12)	11.5	0.3
31 (13)	12 and over	0.0

32 After the director is satisfied that an employer has com-
33 plied with these requirements he shall decrease the em-
34 ployer's rate to the next lower rate if the fund, including
35 the trust fund, clearing account, and benefit account, is as
36 much as eighty million dollars on the computation date,
37 and shall decrease the employer's rate one additional step
38 if the fund is as much as ninety million dollars on the
39 computation date, and shall decrease the employer's rate
40 one additional step for each five million dollars that the
41 fund is above ninety million dollars up to and including
42 one hundred fifteen million dollars on the computation
43 date: *Provided*, That an employer's rate shall not be re-
44 duced below 0.3 per cent until the credits to his account
45 for all past years exceed the benefits charged to his ac-
46 count by an amount equal to at least twelve per cent of
47 his average annual pay roll: *Provided further*, That all
48 required contributions paid on or before July thirty-one
49 immediately following the computation date shall be
50 used in determining the amount in the trust fund and
51 clearing account as of the computation date: *Provided*,
52 That on and after January one, one thousand nine hundred
53 sixty-two, the foregoing provisions of this subsection (2)
54 of section ten, article five, including Table I, shall be void
55 and of no effect, and the following provisions, including
56 Table II, shall, on and after said January one, one thou-
57 sand nine hundred sixty-two, become effective.

58 (2) His payments credited to his account for all past
59 years exceed the benefits charged to his account by an
60 amount equal to at least the per cent of his average an-
61 nual payroll as shown in column B of Table II. His rate
62 shall be the amount appearing in column C of Table II on
63 line with the percentage in column B.

64 The director shall determine an employer's compli-
65 ance with these requirements.

66

TABLE II

Col. A.	Col. B.	Col. C.
Rate Class	Per Cent of Average Annual Pay Roll by Which Credits Exceed Charges	Employer's Rate
67 (1)	6.0	2.5
68 (2)	7.0	2.3
69 (3)	8.0	2.1
70 (4)	9.0	1.9
71 (5)	10.0	1.7
72 (6)	10.5	1.5
73 (7)	11.0	1.3
74 (8)	11.5	1.1
75 (9)	12.0	0.9
76 (10)	12.5	0.7
77 (11)	13.0	0.5
78 (12)	14.0	0.3
79 (13)	16.0	0.1
80 (14)	18.0 and over	0.0

Sec. 16. *Collection of Payments.*—(1) The director in the name of the state shall commence a civil action against an employer who, after due notice, defaults in any payment or interest thereon. If judgment is against the employer he shall pay the costs of the action. Civil actions under this section shall be given preference on the calendar of the court over all other civil actions except petitions for judicial review under article seven of this chapter and cases arising under the workmen's compensation law.

(2) A payment and interest thereon due and unpaid under this chapter shall be a debt due the state in favor of the director. It shall be a personal obligation of the employer and shall, in addition thereto, be a lien, enforceable by suit in equity, upon all the property of the employer: *Provided, however,* That no such lien shall be enforceable as against a purchaser (including lien creditor) of real estate or personal property for a valuable consideration, without notice, unless docketed as provided in chapter ninety-nine, acts of the Legislature, regular session, one thousand nine hundred forty-three.

22 (3) In addition to all other civil remedies prescribed
23 herein the director may in the name of the state distrain
24 upon any personal property, including intangibles, of any
25 employer delinquent for any payment and interest there-
26 on. If the director has good reason to believe that such
27 property or a substantial portion thereof is about to be
28 removed from the county in which it is situated, he may
29 likewise distrain in the name of the state before such de-
30 linquency occurs. For such purpose, the director may re-
31 quire the services of a sheriff of any county in the state
32 in levying such distress in the county in which such sheriff
33 is an officer and in which such personal property is situ-
34 ated. A sheriff so collecting any payments and interest
35 thereon shall be entitled to such compensation as is pro-
36 vided by law for his services in the levy and enforcement
37 of executions.

38 (4) In case a business subject to the payments and in-
39 terest thereon imposed under this chapter shall be op-
40 erated in connection with a receivership or insolvency
41 proceeding in any state court in this state, the court un-
42 der whose direction such business is operated shall, by the
43 entry of a proper order or decree in the cause, make pro-
44 visions, so far as the assets in administration will permit,
45 for the regular payment of such payments as the same be-
46 come due.

47 (5) The secretary of state of this state shall withhold
48 the issuance of any certificate of dissolution or withdrawal
49 in the case of any corporation organized under the laws
50 of this state, or organized under the laws of another state
51 and admitted to do business in this state, until notified by
52 the director that all payments and interest thereon against
53 any such corporation which is an employer under this
54 chapter have been paid or that provision satisfactory to
55 the director has been made for payment.

56 (6) In any case where an employer defaults in pay-
57 ments, or interest thereon, for as many as two calendar
58 quarters, which quarters need not be consecutive, and
59 remains delinquent after due notice, and the director has
60 been unable to collect such payments by any of the other
61 civil remedies prescribed herein, the director may bring

62 action in the circuit court of Kanawha county to enjoin
63 such employer from continuing to carry on the business
64 in which such liability was incurred: *Provided, however,*
65 That the director may as an alternative to this action re-
66 quire such delinquent employer to file a bond in the form
67 prescribed by the director with satisfactory surety in an
68 amount not less than fifty per cent more than the tax due.

69 (7) All state, county, district and municipal officers
70 and agents making contracts on behalf of the state of West
71 Virginia or any political subdivision thereof shall with-
72 hold payment in the final settlement of such contracts
73 until the receipt of a certificate from the director to the
74 effect that all payments and interest thereon accrued
75 against the contractor under this chapter have been paid
76 or that provisions satisfactory to the director have been
77 made for payment. Any official violating this section
78 shall be guilty of a misdemeanor, and, on conviction there-
79 of, shall be fined not more than one thousand dollars or
80 imprisoned not exceeding one year in the county jail, or
81 shall be subject to both such fine and imprisonment, in the
82 discretion of the court.

Article 6. Employee Eligibility; Benefits.

Section

- 4. Disqualification for benefits.
- 4-a. Individual not disqualified by receiving vocational training.
- 10. Benefit rate; total unemployment.
- 11. Benefit rate; partial unemployment.

Sec. 4. *Disqualification for Benefits.*—Upon the deter-
2 mination of the facts by the director, an individual shall
3 be disqualified for benefits:

4 (1) For the week in which he left his most recent work
5 voluntarily without good cause involving fault on the part
6 of the employer and the six weeks immediately following
7 such week. Such disqualification shall carry a reduction
8 in the maximum benefit amount equal to six times the
9 individual's weekly benefit rate. However, if the claimant
10 returns to work in covered employment during his benefit
11 year, the maximum benefit amount shall be increased by
12 the amount of the decrease imposed under the disqualifica-
13 tion. For the purpose of this subsection, the term "work"

14 means employment with the last employing unit with
15 whom such individual was employed as much as thirty
16 days, whether or not such days are consecutive.

17 (2) If he were discharged by his last employing unit
18 for misconduct, and such disqualification shall continue
19 until the individual thereafter has worked for at least
20 thirty days in covered employment: *Provided, however,*
21 That notwithstanding any other provision in this chapter,
22 the account of the employer who discharges an individual
23 for misconduct shall not be charged with benefits paid to
24 said individual after such discharge.

25 (3) For the week in which he failed without good
26 cause, to apply for available suitable work, accept suit-
27 able work when offered, or return to his customary self-
28 employment when directed to do so by the director, and
29 for the four weeks which immediately follow and for such
30 an additional period as any offer of suitable work shall
31 continue open for his acceptance, and his maximum bene-
32 fit amount shall be reduced by an amount equal to his
33 weekly benefit rate times the number of weeks of dis-
34 qualification. However, if the claimant returns to work
35 in covered employment during his benefit year, the maxi-
36 mum benefit amount shall be increased by the amount of
37 the decrease imposed under the disqualification.

38 (4) For a week in which his total or partial unemploy-
39 ment is due to a stoppage of work which exists because of
40 a labor dispute at the factory, establishment, or other
41 premises at which he was last employed, unless the di-
42 rector is satisfied that he was not (one) participating,
43 financing, or directly interested in such dispute, and (two)
44 did not belong to a grade or class of workers who were
45 participating, financing, or directly interested in the labor
46 dispute which resulted in the stoppage of work. No dis-
47 qualification under this subsection shall be imposed if the
48 employees are required to accept wages, hours or condi-
49 tions of employment substantially less favorable than
50 those prevailing for similar work in the locality, or if em-
51 ployees are denied the right of collective bargaining under
52 generally prevailing conditions, or if an employer shuts
53 down his plant or operation or dismisses his employees in

54 order to force wage reduction, changes in hours or work-
55 ing conditions.

56 (5) For a week with respect to which he is receiving
57 or has received:

58 (a) Wages in lieu of notice or payments under any
59 form of a separation wage plan.

60 (b) Compensation for temporary total disability under
61 the workmen's compensation law of any state or under
62 a similar law of the United States.

63 (c) Unemployment compensation benefits under the
64 laws of the United States or any other state.

65 (6) For the week in which an individual is not em-
66 ployed because of pregnancy, or has voluntarily quit em-
67 ployment to marry or to perform any marital, parental or
68 family duty, or to attend to his or her personal business or
69 affairs, and until the individual returns to covered employ-
70 ment and has been employed in covered employment at
71 least thirty working days; notwithstanding the foregoing
72 provisions, in case of pregnancy, the disqualification shall
73 last no longer than six weeks prior to and six weeks sub-
74 sequent to the date of birth of the child, provided that
75 the individual furnishes the employer a certificate from
76 a physician that she is physically able to work.

77 (7) For each week in which an individual is unem-
78 ployed because, having voluntarily left employment to
79 attend a school, college, university, or other educational
80 institution, he is attending such school, college, university,
81 or other educational institution, or is awaiting entrance
82 thereto or is awaiting the starting of a new term or ses-
83 sion thereof, and until the individual returns to covered
84 employment.

85 (8) For each week in which he is unemployed because
86 of his request, or that of his duly authorized agent, for a
87 vacation period at a specified time that would leave the
88 employer no other alternative but to suspend operations.

89 (9) For each week in which he is receiving or has re-
90 ceived remuneration in the form of an annuity, pension,
91 or other retirement pay, from an employer or from any
92 trust or fund contributed to by an employer. But if such

93 remuneration for any week is less than the benefits which
94 would otherwise be due him for such week under this
95 chapter, he shall be entitled to receive for such week, if
96 otherwise eligible, benefits reduced by the amount of
97 such remuneration: *Provided*, That if such amount of
98 benefits is not a multiple of one dollar, it shall be com-
99 puted to the next higher multiple of one dollar: *Pro-*
100 *vided further*, That there shall be no disqualification if
101 in the individual's base period there are no wages which
102 were paid by the employer paying such remuneration,
103 or by a fund into which the employer has paid during
104 said base period. Claimant may be required to certify
105 as to whether or not he is receiving or has received re-
106 muneration in the form of an annuity, pension, or other
107 retirement pay from an employer or from a trust fund
108 contributed to by an employer.

109 (10) For each week in which he knowingly made a
110 false statement or representation knowing it to be false
111 or knowingly failed to disclose a material fact in order
112 to obtain or increase a benefit under this article. For
113 each such week of disqualification he shall be disquali-
114 fied an additional five weeks and his maximum benefit
115 amount shall be reduced by an amount equal to five times
116 his weekly benefit rate. Such five weeks disqualification
117 periods are to run consecutively beginning with the first
118 week in which it is determined a fraudulent claim was
119 filed: *Provided*, That an individual shall not be disquali-
120 fied under this subsection for a period of more than fifty-
121 two consecutive weeks: *Provided further*, That disquali-
122 fication under this subsection shall not preclude prosecu-
123 tion under article ten, section seven.

124 (11) For the purposes of this section an employer's
125 account shall not be charged under any of the following
126 conditions: When benefits are paid for unemployment
127 immediately after the expiration of a period of disquali-
128 fication for (a) leaving work voluntarily without good
129 cause involving fault on the part of the employer, (b)

130 failing without good cause to apply for available suitable
131 work, accept suitable work, when offered, or return to his
132 customary self-employment when directed to do so by
133 the director.

Sec. 4-a. *Individual Not Disqualified by Receiving Vocational Training.*—Notwithstanding any other provision in
2 this act, no individual shall be disqualified from obtaining
3 unemployment compensation benefits because of his re-
4 ceiving training as part of an area vocational program, or
5 similar program, which has as its object the training of
6 unemployed individuals in new occupational skills.
7

Sec. 10. *Benefit Rate; Total Unemployment.*—Each
2 eligible individual who is totally unemployed in any
3 week shall be paid benefits with respect to that week at
4 the weekly rate appearing in column (C) in Table A in
5 this paragraph, on the line on which in column (A) there
6 is indicated the employee's wage class, except as other-
7 wise provided under the term "total and partial unem-
8 ployment" in section three, article one of this chapter.
9 The employee's wage class shall be determined by his
10 base period wages as shown in column (B) in Table A.
11 The right of an employee to receive benefits shall not
12 be prejudiced nor the amount thereof be diminished by
13 reason of failure by an employer to pay either the wages
14 earned by the employee or the contribution due on such
15 wages. An individual who is totally unemployed but
16 earns in excess of ten dollars as a result of odd-job or
17 subsidiary work in any benefit week shall be paid benefits
18 for such week in accordance with the provisions of this
19 chapter pertaining to benefits for partial unemployment.
20 The provisions of this section shall apply to all benefit
21 weeks occurring in benefit years beginning after the effec-
22 tive date of this act; for benefit weeks occurring in benefit
23 years beginning prior thereto the provisions then in effect
24 shall apply.

25

TABLE A

Wage Class (Col. A)		Wages in Base Period (Col. B)	Weekly Benefit Rate (Col. C)	Maximum Benefit in Benefit Year for Total and/or Partial Unempl. (Col. D)
26		Under \$ 500.00	Ineligible	Amount
27	1	\$500.00- 599.99	\$ 10.00	\$260.00
28	2	600.00- 699.99	11.00	286.00
29	3	700.00- 799.99	12.00	312.00
30	4	800.00- 899.99	13.00	338.00
31	5	900.00- 999.99	14.00	364.00
32	6	1000.00- 1149.99	15.00	390.00
33	7	1150.00- 1299.99	16.00	416.00
34	8	1300.00- 1449.99	17.00	442.00
35	9	1450.00- 1599.99	18.00	468.00
36	10	1600.00- 1749.99	19.00	494.00
37	11	1750.00- 1899.99	20.00	520.00
38	12	1900.00- 2049.99	21.00	546.00
39	13	2050.00- 2199.99	22.00	572.00
40	14	2200.00- 2349.99	23.00	598.00
41	15	2350.00- 2499.99	24.00	624.00
42	16	2500.00- 2599.99	25.00	650.00
43	17	2600.00- 2699.99	26.00	676.00
44	18	2700.00- 2799.99	27.00	702.00
45	19	2800.00- 2899.99	28.00	728.00
46	20	2900.00- 2999.99	29.00	754.00
47	21	3000.00- 3099.99	30.00	780.00
48	22	3100.00- 3199.99	31.00	806.00
49	23	3200.00 and over	32.00	832.00

Sec. 11. *Benefit Rate; Partial Unemployment.*—An
 2 eligible individual who is partially unemployed in any
 3 week shall upon claim therefor filed within such time and
 4 in such manner as the director may by regulation pre-
 5 scribe, be paid benefits for such partial unemployment in
 6 an amount equal to his weekly benefit rate, as deter-
 7 mined in accordance with section ten of this article, less
 8 that part of wages from any source payable to him with
 9 respect to such week which is in excess of ten dollars:
 10 *Provided, That such amount of benefits if not a multiple*
 11 *of one dollar shall be computed to the next higher multiple*

12 of one dollar. Such partial benefits shall be paid to such
13 individual for the week for which he is claiming bene-
14 fits without regard to the provisions of subsections one
15 and four of section one of this article.

Article 7. Claim Procedure.

Section

8. Appeal from deputy's decision.

Section 8. *Appeal from Deputy's Decision.*—A claimant,
2 last employer, or other interested party, may file an ap-
3 peal from the decision of the deputy within eight calendar
4 days after notice of the decision has been delivered or
5 mailed by certified mail to the claimant and last em-
6 ployer as provided in section four of this article. The
7 period within which an appeal from the decision of the
8 deputy may be filed shall be stated in such notice. The
9 decision of the deputy shall be final and benefits shall be
10 paid or denied in accordance therewith unless an appeal
11 is filed within such time.

12 Upon appeal from the determination of a deputy, an
13 individual shall be entitled to a fair hearing and reason-
14 able opportunity to be heard before an appeal tribunal
15 as provided in section seven of this article.

16 Within eight days after receipt by the board of notice
17 of appeal from the decision of a deputy, the board shall
18 fix the time and place for hearing such appeal, and notify
19 the claimant, last employer, and the director, ten days in
20 advance of the date set for hearing.

21 Upon consideration of all evidence the appeal tribunal
22 shall make a decision within twenty-one days after the
23 date of the hearing and shall notify the claimant, last
24 employer, and the director of its findings and decision.

CHAPTER 56

(Senate Bill No. 206—By Mr. Carson, Mr. President)

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amend-

ed, by adding thereto a new article, designated article two-a, authorizing and directing the director of the West Virginia department of employment security to establish a retirement system for the employees thereof, subject to certain conditions.

Article 2-a. Departmental Retirement System.

Section

1. Establishment of retirement system.
2. Terms, conditions and administration generally; when operative; retirement board; custodian.
3. Covered employees.
4. Payroll deductions.
5. Exemption from levy, garnishment, and other process.
6. Protection against fraud, penalties.
7. Inconsistent acts repealed.
8. Constitutionality.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Establishment of Retirement System.*—The
2 director of the West Virginia department of employment
3 security is hereby authorized, empowered, and directed
4 to establish a retirement system for the employees there-
5 of, effective July one, one thousand nine hundred sixty-
6 one, to be known and designated as the West Virginia
7 department of employment security retirement system,
8 but subject to the terms and conditions of this article.

Sec. 2. *Terms, Conditions and Administration Generally;*
2 *when Operative; Retirement Board; Custodian.*—The re-
3 tirement system so authorized and directed to be estab-
4 lished shall be subject to the following terms and condi-
5 tions:
6 (a) The funds for the operation of such system shall be
7 provided from contributions of the employees who become
8 members thereof, and from funds provided by the United
9 States department of labor, bureau of employment se-
10 curity. The state of West Virginia shall not be liable for
11 any of the benefits set forth in said retirement system nor
12 for any funds required to provide such benefits.

13 (b) The provisions of the retirement system shall
14 comply with all the conditions and requirements of the
15 bureau of employment security, United States depart-
16 ment of labor.

17 (c) Said retirement system shall commence operation
18 on July one, one thousand nine hundred sixty-one, or
19 thereafter: *Provided, however,* That the bureau of em-
20 ployment security, United States department of labor,
21 shall prior to the date of commencement have approved
22 the provisions of said system and shall have agreed to pro-
23 vide such funds as may be required of it for the said sys-
24 tem under the terms and provisions thereof. For the pur-
25 pose of computing benefits payable under said system,
26 credit may be granted on account of service rendered to
27 the West Virginia department of employment security
28 prior to July one, one thousand nine hundred sixty-one, in
29 addition to credit allowed for such service rendered there-
30 after.

31 (d) The general administration and the management of
32 said system shall be invested in a retirement board, to be
33 composed of five members as follows: The governor of the
34 state of West Virginia, who shall be ex officio chairman;
35 the state auditor; the state treasurer; the director of the
36 West Virginia department of employment security; and
37 one member of the state advisory council of the depart-
38 ment of employment security, who shall be designated by
39 the governor. The retirement board shall have the right
40 to sue and be sued, plead and be impleaded, contract and
41 be contracted with and shall make all necessary rules, con-
42 sistent with this article and the provisions of the said re-
43 tirement system, for the proper administration thereof.

44 (e) The state treasurer shall be the custodian of the
45 funds and securities of said system. The members of the
46 retirement board, or one or more members thereof, if
47 authorized to do so by resolution of said board, shall have
48 authority to requisition for disbursements from said
49 funds. Disbursements from the funds of said system shall
50 be made by the custodian only upon warrants signed by
51 the state auditor and the state treasurer. The state treas-
52 urer shall give a separate and additional bond in such

53 amount as may be fixed by the governor for the faithful
54 performance of the duties as custodian of the retirement
55 system. Such bond shall be approved by the governor
56 and filed in the same office as are the bonds of other state
57 officers. The custodian shall furnish annually to the re-
58 tirement board a sworn statement of the funds in his
59 custody belonging to said retirement system.

60 (f) The members of the retirement board shall be the
61 trustees of the funds of said retirement system, and shall
62 determine from time to time what part of said funds shall
63 be invested, but such investments shall be made only in
64 those securities which are legal for investments by life
65 insurance companies domiciled in West Virginia.

66 (g) The state auditor shall periodically review the
67 records maintained by said retirement system, and shall
68 submit to the retirement board a written report setting
69 forth the results of such review.

70 (h) The retirement board shall employ a competent
71 actuary to prepare annual actuarial valuations of the
72 contingent assets and liabilities of said system and to
73 certify the contributions he would recommend be made
74 in order that said system shall at all times be on a sound
75 actuarial basis.

76 (i) The funds of said retirement system shall be used
77 only for the benefit of employees who are members
78 thereof, and their beneficiaries, in accordance with the
79 terms and provisions of said system.

Sec. 3. *Covered Employees.*—Employees covered by
2 the retirement system shall include all employees (other
3 than provisional, temporary, emergency, and intermittent
4 employees) who are in employee status with the West
5 Virginia department of employment security on or after
6 the effective date of the retirement system.

Sec. 4. *Payroll Deductions.*—Whenever any employee
2 of the West Virginia department of employment security
3 shall become eligible to participate in the retirement
4 system, the director shall have power and authority
5 to authorize participation in such plan and the director

6 shall make periodic deductions from salary payments due
7 such employee of the amount of the contributions such
8 employee is required to make for his participation in the
9 retirement system. Upon proper requisition of the di-
10 rector, the auditor shall periodically issue a warrant pay-
11 able as specified in the requisition, for the total contribu-
12 tions so withheld from the salaries of the employees par-
13 ticipating in said retirement system. To promote efficiency
14 and economy in making deductions and issuing warrants
15 as provided herein, the auditor is authorized to promul-
16 gate rules and regulations specifying the form and the
17 time and manner of presentation of requisitions issued
18 pursuant to this section.

Sec. 5. *Exemption from Levy, Garnishment, and Other*
2 *Process.*—The moneys in the retirement fund and the
3 right of a member to a retirement allowance, to the return
4 of contributions, or to any benefit under the provisions of
5 this article, shall not be subject to execution, garnishment
6 attachment or any other process whatsoever.

Sec. 6. *Protection against Fraud; Penalties.*—Any per-
2 son who knowingly makes any false statement or who
3 shall falsify or permit to be falsified any record or records
4 of said retirement system in any attempt to defraud said
5 system shall be guilty of a misdemeanor, and, upon con-
6 viction, shall be punished by a fine of not exceeding one
7 thousand dollars, or imprisonment not exceeding one
8 year, or both.

Sec. 7. *Inconsistent Acts Repealed.*—All previous acts
2 or parts of acts inconsistent with this article are hereby re-
3 pealed.

Sec. 8. *Constitutionality.*—If any part of this article is
2 declared unconstitutional, it shall not affect any portion
3 which remains, but the remaining parts of the article shall
4 be in full force and effect as if the parts declared uncon-
5 stitutional had never been a part of this article.

CHAPTER 57

(House Bill No. 52—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 3, 1961: in effect from passage. 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 six-a, relating to emergency interim executive and judicial succession.

CHAPTER 6A. EXECUTIVE AND JUDICIAL SUCCESSION

Article 1. Executive and Judicial Succession.

Section

1. Short title.
2. Statement of policy.
3. Definitions.
4. Additional successors to office of governor.
5. Emergency interim successors for state officers.
6. Enabling authority for emergency interim successors for local offices.
7. Emergency interim successors for local officers.
8. Special emergency judges.
9. Formalities of taking office.
10. Period in which authority may be exercised.
11. Removal of designees.
12. Disputes.
13. Separability.

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 inserting a new chapter, designated chapter six-a, to read as follows:

- Section 1. *Short Title.*—This article shall be known and
- 2 may be cited as the "Emergency Interim Executive and
 - 3 Judicial Succession Act."

- Sec. 2. *Statement of Policy.*—Because of the existing
- 2 possibility of attack upon the United States of unprece-
 - 3 dented size and destructiveness, and in order, in the
 - 4 event of such an attack, to assure continuity of govern-
 - 5 ment through legally constituted leadership, authority

6 and responsibility in offices of the government of the
7 state and its political subdivisions; to provide for the
8 effective operation of government during such an emer-
9 gency; and to facilitate the early resumption of functions
10 temporarily suspended, it is found and declared to be
11 necessary to provide for additional officers who can exer-
12 cise the powers and discharge the duties of governor;
13 to provide for emergency interim succession to govern-
14 mental offices of this state and its political subdivisions in
15 the event of the incumbents thereof and their deputies,
16 assistants or other subordinate officers authorized, pur-
17 suant to law, to exercise all of the powers and discharge
18 the duties of such offices hereinafter referred to as depu-
19 ties, assistants, or otherwise, are unavailable to perform
20 the duties and functions of such offices; and to provide
21 for special emergency judges who can exercise the powers
22 and discharge the duties of judicial offices in the event
23 regular judges are unavailable.

Sec. 3. *Definitions.*—Unless otherwise clearly required
2 by the context, as used in this article:

3 (a) “Unavailable” means either that a vacancy in office
4 exists and there is no deputy authorized to exercise all
5 of the powers and discharge the duties of the office, or
6 that the lawful incumbent of the office, including any
7 deputy exercising the powers and discharging the duties
8 of an office because of a vacancy and his duly authorized
9 deputy, are absent or unable to exercise the powers and
10 discharge the duties of the office.

11 (b) “Emergency interim successor” means a person
12 designated pursuant to this article, in the event the officer
13 is unavailable, to exercise the powers and discharge the
14 duties of an office until a successor is appointed or elected
15 and qualified as may be provided by the constitution,
16 statutes, charters and ordinances or until the lawful in-
17 cumbent is able to resume the exercise of the powers and
18 discharge the duties of the office.

19 (c) “Office” includes all state and local offices, the
20 powers and duties of which are defined by the constitu-
21 tion, statutes, charters, and ordinances, except the office
22 of governor, and except those in the Legislature and the
23 judiciary.

24 (d) "Attack" means any attack or series of attacks
25 by an enemy of the United States causing, or which may
26 cause, substantial damage or injury to civilian property
27 or persons in the United States in any manner by sabotage
28 or by the use of bombs, missiles, shellfire, or atomic,
29 radiological, chemical, bacteriological, or biological means
30 or other weapons or processes.

31 (e) "Political subdivision" includes counties, cities,
32 towns, districts, authorities, and other public corporations
33 and entities, whether organized and existing under charter
34 or general law.

Sec. 4. *Additional Successors to Office of Governor.*—

2 In the event that the governor, for any of the reasons
3 specified in the constitution, is not able to exercise the
4 powers and discharge the duties of his office, or is un-
5 available, then the president of the senate shall act as
6 governor, and if the president of the senate, for any of the
7 reasons specified in the constitution, is not able to exercise
8 the powers and discharge the duties of the office of gov-
9 ernor, or is unavailable, then the speaker of the house of
10 delegates shall act as governor, and if the speaker of the
11 house of delegates, for any of the reasons specified in the
12 constitution, is not able to exercise the powers and dis-
13 charge the duties of the office of governor, or is unavail-
14 able, then the attorney general, the state auditor, and
15 resident ex-governors of this state, in inverse order of
16 service, shall, in the order named, if the preceding named
17 officers be unavailable, exercise the powers and discharge
18 the duties of the office of governor until a new governor
19 is elected and qualified, or until a preceding named officer
20 becomes available.

Sec. 5. *Emergency Interim Successors for State Officers.*

2 —All state officers, subject to such regulations as the
3 governor may issue, shall, upon approval of this article,
4 in addition to any deputy authorized pursuant to law to
5 exercise all of the powers and discharge the duties of the
6 office, designate by title emergency interim successors
7 and specify their order of succession. The officer shall
8 review and revise, as necessary, designations made pur-
9 suant to this article to insure their current status. The
10 officer will designate a sufficient number of such emer-

11 gency interim successors so that there will be not less
12 than three nor more than seven such deputies or emer-
13 gency interim successors or any combination thereof at
14 any time. In the event of an attack, and in the event
15 that any state officer or his deputy, if any, is unavailable
16 following such an attack, the said powers of his office
17 shall be exercised and said duties of his office shall be
18 discharged by his designated emergency interim suc-
19 cessors in the order specified. Such emergency interim
20 successors shall exercise said powers and discharge said
21 duties only until such time as the governor under the
22 constitution or authority other than this article or other
23 official authorized under the constitution or this article
24 to exercise the powers and discharge the duties of the
25 office of governor may, where a vacancy exists, appoint
26 a successor to fill the vacancy or until a successor is other-
27 wise appointed, or elected, and qualified as provided by
28 law; or an officer or his deputy or a preceding named
29 emergency interim successor becomes available to exer-
30 cise or resume the exercise of the powers and discharge
31 the duties of his office.

Sec. 6. *Enabling Authority for Emergency Interim Suc-
cessors for Local Offices.*—With respect to local offices
2 for which the governing bodies of cities, towns, and coun-
3 ties may enact resolutions or ordinances relative to the
4 manner in which vacancies will be filled or temporary
5 appointments to office made, such governing bodies are
6 hereby authorized to enact resolutions or ordinances pro-
7 viding for emergency interim successors to offices of the
8 aforementioned governmental units. Such resolutions and
9 ordinances shall not be inconsistent with the provisions
10 of this article or any other statute of this state.

Sec. 7. *Emergency Interim Successors for Local Officers.*
2 —The provisions of this section shall be applicable to
3 officers of political subdivisions, including, but not limited
4 to, cities, towns, and counties, as well as fire, power and
5 drainage and other types of districts not included in sec-
6 tion six. Such officers, subject to such regulations as the
7 governing body may issue, shall, upon approval of this
8 article, designate by title, if feasible, or by named person,
9 emergency interim successors and specify their order of

10 succession. The officer shall review and revise, as neces-
11 sary, designations made pursuant to this article to insure
12 their current status. The officer will designate a sufficient
13 number of persons so that there will be not less than three,
14 nor more than seven, deputies or emergency interim suc-
15 cessors or any combination thereof at any time. In the
16 event of an attack, and in the event that any officer of any
17 political subdivision or his deputy provided for pursuant
18 to law is unavailable, the powers of the office shall be
19 exercised and duties shall be discharged by his designated
20 emergency interim successors in the order specified. The
21 emergency interim successor shall exercise the powers
22 and discharge the duties of the office to which designated
23 until such time as a vacancy which may exist shall be
24 filled in accordance with the constitution or statutes; or
25 until the officer or his deputy or a preceding emergency
26 interim successor again becomes available to exercise the
27 powers and discharge the duties of his office.

Sec. 8. *Special Emergency Judges.*—In the event of an
2 attack and in the event that any judge of any court of
3 record is unavailable to exercise the powers and discharge
4 the duties of his office, and in the event no other judge
5 authorized to act in the event of absence, disability or
6 vacancy or no special judge appointed in accordance with
7 the provisions of the constitution or statutes is available to
8 exercise the powers and discharge the duties of such
9 office, the duties of the office shall be discharged and the
10 powers exercised by the special emergency judges hereinafter provided for:

12 (a) Each member of the state supreme court of appeals
13 shall designate special emergency judges in the number
14 of not less than three nor more than seven to serve in
15 the event that he becomes unavailable, and shall specify
16 the order of their succession by order duly entered in the
17 supreme court of appeals.

18 (b) The special emergency interim judges of all other
19 courts of record shall be elected by the attorneys practicing within the jurisdiction of said courts.

21 Such special emergency judges of the supreme court of
22 appeals shall, in the order specified, exercise the powers
23 and discharge the duties of such office in case of the un-

24 availability of the regular judge or judges or persons
25 immediately preceding them in the designation. The des-
26 ignating authority shall review and revise, as necessary,
27 designations made pursuant to this article to insure their
28 current status.

29 Said special emergency judges shall discharge the duties
30 and exercise the powers of such office until such time as
31 a vacancy which may exist shall be filled in accordance
32 with the constitution and statutes or until the regular
33 judge or one preceding the designee in the order of suc-
34 cession becomes available to exercise the powers and dis-
35 charge the duties of the office.

Sec. 9. *Formalities of Taking Office.*—At the time of
2 their designation, emergency interim successors and spe-
3 cial emergency judges shall take such oath as may be re-
4 quired for them to exercise the powers and discharge the
5 duties of the office to which they may succeed. Notwith-
6 standing any other provision of law, no person, as a pre-
7 requisite to the exercise of the powers or discharge of the
8 duties of an office to which he succeeds, shall be required
9 to comply with any other provision of law relative to
10 taking office.

Sec. 10. *Period in Which Authority May Be Exercised.*
2 —Officials authorized to act as governor pursuant to this
3 article, emergency interim successors and special emer-
4 gency judges are empowered to exercise the powers and
5 discharge the duties of an office as herein authorized only
6 after an attack upon the United States, as defined herein,
7 has occurred. The Legislature, by concurrent resolution,
8 may at any time terminate the authority of said emer-
9 gency interim successors and special emergency judges to
10 exercise the powers and discharge the duties of office as
11 herein provided.

Sec. 11. *Removal of Designees.*—Until such time as the
2 persons designated as emergency interim successors or
3 special emergency judges are authorized to exercise the
4 powers and discharge the duties of an office in accordance
5 with this article, including section ten hereof, said persons
6 shall serve in their designated capacities at the pleasure
7 of the designating authority and may be removed or re-

8 placed by said designating authority at any time, with or
9 without cause.

Sec. 12. *Disputes.*—Any dispute concerning a question
2 of fact arising under this article with respect to an office
3 in the executive branch of the state government except
4 a dispute of fact relative to the office of governor shall be
5 adjudicated by the governor or other official authorized
6 under the constitution and this article to exercise the
7 powers and discharge the duties of the office of governor
8 and his decision shall be final.

Sec. 13. *Separability.*—The various provisions of this
2 article shall be construed as separable and severable, and
3 should any of the provisions or parts thereof be construed
4 or held unconstitutional or for any reason be invalid, the
5 remaining provisions of this article shall not be thereby
6 affected.

CHAPTER 58

(House Bill No. 63—By Mrs. Drewry and Mr. Casey)

[Passed February 15, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications, appointment, removal, and compensation of members of the state board of health.

Article 1. State Department of Health.

Section

2. Board of health; membership.

Be it enacted by the Legislature of West Virginia:

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

Section 2. *Board of Health; Membership.*—There shall
2 be a state board of health, to be known as the West Vir-
3 ginia board of health, which shall be a corporation and
4 as such may contract and be contracted with, plead and
5 be impleaded, sue and be sued, and have and use a com-
6 mon seal. The state board of health shall consist of nine
7 members, who shall be appointed by the governor, by
8 and with the advice and consent of the senate. Three
9 members of the board shall be physicians or surgeons
10 holding the degree of doctor of medicine, one shall be a
11 dentist, one shall be an osteopathic physician, one shall
12 be a pharmacist, one shall be chosen as the representative
13 of the hospitals licensed in the state of West Virginia
14 and two shall be representative citizens, neither of which
15 said representative citizens shall be an employee of, or
16 connected in any way with, any hospital licensed in this
17 state, and neither of whom shall be a member of any of
18 the professions named above.

19 All persons appointed to membership on the state board
20 of health shall be citizens of this state and shall have
21 been such citizens and residents of the state for at least
22 five years prior to the date of their appointment. Every
23 professional member of the said board shall be duly li-
24 censed to practice his profession in this state on the date
25 of his appointment and shall have been so licensed and
26 have been actively practicing his profession for at least
27 five years immediately preceding the date of such appoint-
28 ment. Before appointing any professional member, the
29 governor shall request the state professional society of
30 the profession practiced by any proposed appointee to
31 furnish to the governor a full and complete report con-
32 cerning the qualifications and suitability of the proposed
33 appointee. All members of the board shall be appointed
34 for terms of nine years each, except that the persons
35 originally appointed, shall be appointed to serve for des-
36 ignated terms beginning on the first day of July, one
37 thousand nine hundred forty-nine, and continuing for one,
38 two, three, four, five, six, seven, eight and nine years
39 respectively. Upon the expiration of such initial appoint-
40 ments the terms of each new appointee shall be nine
41 years. Any vacancy on the board shall be filled by the
42 governor by appointment for the unexpired term.

43 No more than five of the members of the board shall
44 belong to the same political party. Not less than one nor
45 more than two members shall be appointed from the same
46 congressional district. No person shall be eligible for ap-
47 pointment to membership on the state board who is a
48 member of any political party executive committee, or
49 who holds any public office or public employment under
50 the federal government or under the government of this
51 state or any of its political subdivisions, or who is an
52 appointee or employee of the board. All members shall
53 be eligible for reappointment.

54 No member may be removed from office by the gov-
55 ernor except for official misconduct, incompetence, neg-
56 lect of duty or gross immorality and then only in the
57 manner prescribed by law for the removal by the gover-
58 nor of state elective officers: *Provided, however,* That the
59 expiration or revocation of the professional license of any
60 professional member of the board shall be cause for his
61 removal.

62 The members of the board shall be paid the sum of
63 twenty-five dollars for each day actually served in attend-
64 ance at official meetings of the board. The total of such
65 compensation paid to each member during any one fiscal
66 year shall not exceed three hundred dollars. Each mem-
67 ber shall also be paid mileage at the rate of ten cents per
68 mile in the performance of his duties as a member of the
69 board.

CHAPTER 59

(House Bill No. 180—By Mr. Poindexter and Mr. Giffin)

[Passed February 27, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seven-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section seven of said article, all relating to divisions and bureaus within the state department of health.

Article 1. State Department of Health.**Section**

7. Divisions of department; directors of divisions.

Be it enacted by the Legislature of West Virginia:

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

- Section 7. *Divisions of Department; Directors of Divisions.*—There shall be included in the state department of health the following divisions:
- 4 Division of communicable diseases,
 - 5 Division of cancer control,
 - 6 Division of vital statistics,
 - 7 Division of sanitary engineering,
 - 8 Division of maternal and child health,
 - 9 Division of barbers and beauticians,
 - 10 Division of dental health.
- 11 The state board of health shall appoint, with the advice
12 of the director of health, a director for each division, and
13 shall prescribe, with the advice of the director of health,
14 the qualifications of each such division director, the duties
15 pertaining to each division, and the arrangement of the
16 subdivisions, if any, thereof.
- 17 The state board shall have authority to establish such
18 additional administrative sections or groupings within
19 the department of health as it may consider necessary or
20 advisable for the efficient administration of its powers
21 and duties.

CHAPTER 60

(House Bill No. 64—By Mrs. Drewry and Mr. Casey)

[Passed February 14, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation,

organization, powers and duties of, and funds for, combined local boards of health.

Article 2. Local Health Officers.

Section

3. Counties, or counties and municipalities, may combine in employment of officers and installation and maintenance of equipment; combined local boards of health.

Be it enacted by the Legislature of West Virginia:

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

Section 3. *Counties, or Counties and Municipalities, May Combine in Employment of Officers and Installation and Maintenance of Equipment; Combined Local Boards of Health.*—Any two or more counties, or any county or counties and any one or more municipalities within the said county or counties, may combine to cooperate with the state department of health, by vote of the county court in the case of a county and by vote of the council or other governing body in the case of a municipality, and may participate in the employment of trained health officers and other agents and employees, or in the installation and maintenance of a common laboratory and other equipment. Whenever any such units shall decide so to cooperate and shall appropriate a sum or sums of money for such joint or cooperative action, the state department of health is authorized and empowered to pay over and contribute to such cooperating units, and the cooperating units are authorized and empowered to receive and expend for public health purposes, such sum or sums of money as may be available from funds included in appropriations made for the state department of health for such purpose: *Provided*, That the general plan of cooperation, as well as the principal health officer, executive agent or laboratory director employed by the cooperating units, shall first have been approved by the state board of health. The amount of any such payment or contribution by the state department of health to such

28 cooperating units shall be determined in accordance with
29 regulations established by the state board of health. Such
30 regulations shall provide a method for determining the
31 amount of any payment or contribution, and this method
32 shall be uniformly applied in determining the amount of
33 any payment or contribution to any such local govern-
34 mental unit or units.

35 Each county or municipality participating in any such
36 cooperative action shall select and appoint by vote of
37 the county court in the case of a county, and by vote of
38 the council or other governing body in the case of a
39 municipality, not less than one nor more than three per-
40 sons to be members of a combined board of health. No
41 such person shall be selected by, nor represent on, any
42 such combined board, more than one such county or mu-
43 nicipality. The number of persons to be selected by each
44 participating county or municipality as members of such
45 board, subject to the limitation contained in the two pre-
46 ceding sentences, shall be agreed upon by the several
47 counties or municipalities participating.

48 All members of such combined board of health shall
49 be appointed for terms of five years each, except that the
50 persons first appointed pursuant to the provisions of this
51 section, if more than one such person is appointed at
52 the same time by any one county court or municipal
53 governing body, shall be individually designated to serve
54 for terms of one, two, and three years, respectively, and
55 if only one such person is appointed at such time by
56 each participating county or municipality, the several
57 participating counties or municipalities shall initially ap-
58 point such persons to serve for individually designated
59 terms, which shall be agreed upon by the several ap-
60 pointing authorities, of one, two, three, four and five
61 years, respectively. Upon the expiration of the term of
62 such initial appointments, the term of each new appointee
63 shall be five years. Any vacancy on such board shall be
64 filled by appointment, by the original appointing au-
65 thority, for the unexpired term. All members shall serve
66 until their duly qualified successors have been appointed.
67 The number of members of such board belonging to one
68 political party shall not exceed by more than one the

69 number of members of such board belonging to any other
70 political party.

71 All members of any such board shall be citizens and
72 residents of the county or municipality they are appointed
73 to represent. All members shall be eligible for reappoint-
74 ment.

75 No member of such board may be removed from office
76 during the term for which he is appointed, except for
77 official misconduct, incompetence, neglect of duty or gross
78 immorality.

79 No member of such board shall receive any compensa-
80 tion for his services, but each may be reimbursed for
81 actual and necessary travel and other expenses necessarily
82 incurred by him in the performance of his duties as a
83 member of such board.

84 Any such combined board of health shall consist of the
85 several members so selected. Such board shall organize
86 by electing a chairman from among its members. It shall
87 have the power to adopt, and from time to time amend,
88 such rules and regulations as it may deem necessary con-
89 cerning the time and place of its meetings, the procedure
90 and method of conducting its meetings or business, and
91 any other matters affecting, or necessary to, the orderly
92 and efficient discharge of its duties or exercise of its
93 powers. All powers and duties belonging to or vested in
94 county boards of health or municipal boards of health
95 under any provisions of this code are hereby vested in, con-
96 ferred upon, and declared to be, the powers and duties of
97 any combined board of health created pursuant to the
98 provisions of this section. All powers and duties belong-
99 ing to or vested in county or municipal health officers,
100 so far as they are applicable and not in conflict with the
101 provisions of this section, are hereby vested in, conferred
102 upon, and declared to be, the powers and duties of any
103 health officer appointed and employed by any combined
104 board of health. Any health officer or other employee
105 appointed or employed by any combined board of health
106 shall be employed and serve, and may be discharged, at
107 the will and pleasure of such board. The territorial juris-
108 diction of any such combined board of health shall be
109 coextensive with the boundaries of all of the counties and

110 municipalities which have been combined to cooperate
111 as herein provided.

112 Upon the formation of a combined local board of health
113 as herein provided, and during the period that it con-
114 tinues to exist, there shall be no separate county board
115 of health or municipal board of health in any county or
116 municipality represented on the combined board of health.

CHAPTER 61

(Senate Bill No. 55—By Mr. Wylie)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eighteen and twenty-one, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compensation of local registrars and fees to be paid state registrar for certified copy of a birth or death record.

Article 5. Vital Statistics.

Section

18. Compensation of local registrars.
21. Certified copies from birth and death records; fees.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and twenty-one, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 18. *Compensation of Local Registrars.*—Each
- 2 local registrar shall be paid the sum of one dollar for each
 - 3 birth certificate and each death certificate properly and
 - 4 completely made out and registered with him, and cor-
 - 5 rectly recorded and promptly returned by him to the state
 - 6 registrar, as required by this article. And in case no births
 - 7 nor deaths were registered during any month, the local

8 registrar shall be entitled to be paid the sum of one dollar
9 for each report to that effect, but only if such reports be
10 made promptly as required by this article. The state regis-
11 trar shall annually certify to the county courts of the sev-
12 eral counties the number of births and deaths properly
13 registered, with the names of the local registrars and the
14 amounts due each at the rates fixed herein. All amounts
15 payable to a local registrar under the provisions of this
16 section shall be paid by the treasurer of the county in
17 which the registration district is located, upon the order
18 of the county court of such county issued upon such certi-
19 fication by the state registrar.

Sec. 21. *Certified Copies from Birth and Death Records;*
2 *Fees.*—The state registrar shall, upon request, supply to
3 any applicant a certified copy of the record of any birth or
4 death registered under the provisions of this article:
5 *Provided, however,* That when a request is made for a
6 birth certificate of any person who has been legally
7 adopted, the state registrar shall, upon special request
8 therefor, issue in lieu of a certified copy of the original
9 record a special birth certificate showing only (a) the
10 name of the proposed adopted person as changed by the
11 decree of adoption, if changed, without any indication that
12 the child was other than natural born to the adopting
13 parent or parents; (b) the date and place of birth, if
14 known; and (c) the names of the adopting parent or
15 parents. Such special certificate shall be accepted by
16 all school authorities as evidence of the child's age
17 for all purposes connected with employment or school
18 attendance. For the making and certification of each cer-
19 tified copy of the record of any birth, death, or of any
20 special birth certificate, the state registrar shall be entitled
21 to a fee of one dollar to be paid by the applicant. Such
22 copy shall not state that any child was either legitimate
23 or illegitimate. Any such copy of the record of a birth or
24 death, or such special birth certificate, when properly cer-
25 tified by the state registrar, shall be prima facie evidence,
26 in all courts and places, of the facts therein stated. For any
27 search of the files and records when no certified copy is
28 made, the state registrar shall be entitled to a fee of one

29 dollar for each hour or fractional part of an hour of time
30 of search, said fee to be paid by the applicant. The state
31 registrar shall keep a true and correct account of all fees
32 by him received under the provisions of this article and
33 turn the same over to the state treasurer: *Provided*, That
34 the state registrar shall, upon request of any parent or
35 guardian, supply without fee a certificate limited to a
36 statement as to the date of birth of any child when the
37 same shall be necessary for admission to school, or for the
38 purpose of securing employment: *Provided further*, That
39 the United States bureau of census may obtain, without
40 expense to the state, transcripts or certified copies of births
41 and deaths without payment of the fees herein prescribed:
42 *And provided further*, That the state registrar may fur-
43 nish certified copies of birth and death records to the state
44 welfare department, to county welfare departments and
45 to organized charities, free of charge, when such certifi-
46 cates are needed in presenting claims to the federal gov-
47 ernment, or to the West Virginia relief compensation de-
48 partment; and an accurate record shall be made of all such
49 certificates so furnished.

CHAPTER 62

(Senate Bill No. 29—By Mr. Kaufman)

[Passed February 16, 1961; 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 nineteen, relating to the disposition by written instrument of eyes or parts thereof after death for the purpose of medical science or rehabilitation of human beings.

Article 19. Donation of Eyes.

Section

1. Right of disposition.
2. Manner of disposition; authority of person having right to body for burial.

3. Form for donation; revocation by donor; donees; right to remove eyes from body; remuneration or fees; right to rely upon dispositive instrument.

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 nineteen, to read as follows:

Section 1. *Right of Disposition.*—The Legislature finds and declares that a person has the right to direct the manner in which his eyes, or any part thereof, shall be disposed of after his death.

Sec. 2. *Manner of Disposition; Authority of Person Having Right to Body for Burial.*—A person twenty-one or more years of age and of sound mind may prescribe by written instrument for the disposition to be made, after his death, of his eyes or any part thereof, if such person shall receive no remuneration or other thing of value for such disposition and it is for the purpose of advancing medical science or for the replacement or rehabilitation of diseased eyes or worn out or injured parts of the eyes of living human beings. The person or persons having the right to a body for burial may likewise so consent to such use of the eyes or parts thereof. Notwithstanding any provision of chapter forty-one of this code, any such donation, authorization or consent may be by dated written instrument signed by the person making or giving the same and witnessed by two persons of legal age.

Sec. 3. *Form for Donation; Revocation by Donor; Donees; Right to Remove Eyes from Body; Remuneration or Fees; Right to Rely upon Dispositive Instrument.*—No particular form or words shall be necessary or required for such donation or authorization: *Provided*, That the instrument conveys the clear intention of the purpose of the person making the same. Any such disposition of his own eyes or parts thereof may be revoked by the donor at any time prior to his death by the execution of a written instrument in the same manner as the original grant. Each instrument may designate the donee, but such designation shall not be necessary to its validity. A donee

13 may be an individual, hospital, institution, an agency en-
14 gaged in sight restoration or a bank maintained for the
15 storage, preservation and use of human eyes or parts
16 thereof. If no specific donee is named in such instrument,
17 then the hospital in which the donor dies shall be consid-
18 ered to be the donee, and if such donor does not die in a
19 hospital, then the attending physician shall be considered
20 to be the donee; such hospital or physician shall have full
21 authority to take and remove said eyes or parts thereof
22 which such donor has designated, and to make the same
23 available to any person or institution in need thereof.
24 Where a donee is named in such instrument, any hospital
25 or physician acquiring possession or custody of the body
26 shall have the authority to remove from the body the eyes
27 or parts thereof which the donor has designated, and to
28 deliver the same to the named donee: *Provided, however,*
29 That no one shall receive any remuneration or other thing
30 of value whatsoever, except the established fees, for the
31 rendition of such services, for any eyes or parts thereof
32 donated under the provisions of this article; and that no
33 claim for services in removing the eyes or parts thereof
34 shall be a claim against the estate of the deceased. No
35 hospital, donee or physician, who reasonably relies upon a
36 dispositive instrument appearing to have been made in
37 conformity with the provisions of this article, shall be
38 liable civilly or criminally for removing eyes or parts
39 thereof from the body of a deceased donor. No court order
40 or appointment of a fiduciary for the estate of the de-
41 ceased shall be necessary before the removal of said eyes
42 or parts thereof.

— 0 —

CHAPTER 63

(Senate Bill No. 76—By Mr. Moreland)

[Passed March 8, 1961; 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.

relating to air pollution control; creating an air pollution control commission and defining its powers and duties; defining what shall constitute the pollution of air in violation of the provisions of this article; providing for procedures before the commission; providing penalties and remedies for violations; providing for emergency powers of the commission; and repealing statutes or parts of statutes inconsistent with the provisions of this article.

Article 20. Air Pollution Control.

Section

1. Declaration of policy and purpose.
2. Definitions.
3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.
4. Air pollution control commission created; composition; appointment and terms of members; vacancies; expenses of members; organization and personnel; records; meetings.
5. Same; powers and duties of commission generally; rules and regulations; public hearings.
6. Notice of alleged violations; hearings; factors considered; orders of commission; petitions to modify or vacate order; confirming or modifying order; when order final; record of proceedings.
7. Appeals from orders of commission; procedure; jurisdiction.
8. Penalties.
9. Applications for injunctive relief.
10. Emergencies; powers of commission; procedure.
11. Powers reserved to state board of health, local health boards and political subdivisions; conflicting statutes repealed.
12. Severability.
13. Effective date of rules and regulations.

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, to read as follows:

Section 1. *Declaration of Policy and Purpose.*—It is hereby determined and declared to be the policy of the state of West Virginia to maintain such a reasonable degree of purity of the air resources of the state as shall be technically feasible, economically reasonable, and necessary for the protection of the normal health, the general welfare and the property of the people of the state. The measures for the accomplishment of this purpose shall not unreasonably obstruct the attraction, development and expansion of business, industry and commerce within

11 the state. The program for the control of air pollution
12 under this article shall be sought to be accomplished by a
13 maximum of cooperation and conciliation among all the
14 parties concerned. All powers herein conferred upon the
15 air pollution control commission shall be exercised solely
16 to effectuate the policy declared in this section.

Sec. 2. *Definitions.*—The terms used in this article are
2 defined as follows:

3 The term "person" shall mean any and all persons,
4 natural or artificial, including any municipal, public or
5 private corporation organized or existing under the laws
6 of this or any other state or county, and any firm, partner-
7 ship or association of whatever nature.

8 The term "commission" shall mean the air pollution
9 control commission herein created, and the term "commis-
10 sioner" shall mean a member of said commission.

11 The term "air pollutants" shall mean solids, liquids or
12 gases which, if discharged into the air, will result in a
13 statutory air pollution.

14 The term "discharge" shall refer to any continuous or
15 regular release, escape or emission of air pollutants into
16 the air.

17 The term "statutory air pollution" shall mean and be
18 limited to the discharge into the air by the act of man of
19 substances (liquid, solid, gaseous, organic or inorganic)
20 in a locality, manner and amount as to be unreasonably
21 and materially injurious to human, animal or plant life
22 or to property.

Sec. 3. *Causing Statutory Pollution Unlawful; Article*
2 *Not to Provide Persons with Additional Legal Remedies.*
3 —For the purposes of this article and subject to all of the
4 provisions hereof, it shall be unlawful for any person to
5 cause a statutory air pollution as herein defined: *Pro-*
6 *vided, however,* That nothing contained in this article
7 shall be construed to provide any person with a legal
8 remedy or basis for damages or other relief not otherwise
9 available to such person immediately prior to enactment
10 of this article.

Sec. 4. *Air Pollution Control Commission Created; Com-*
2 *position; Appointment and Terms of Members; Vacancies;*

3 *Expenses of Members; Organization and Personnel;*
4 *Records; Meetings.*—There is hereby created, as an agency
5 of this state, an air pollution control commission which
6 shall consist of five members, including the state director
7 of health and the commissioner of agriculture, who shall
8 be members ex officio, and three other members who shall
9 be appointed by the governor, with the advice and consent
10 of the senate, at least two of whom shall be truly repre-
11 sentative of industries engaged in business in this state.
12 The term of office of the three members of the commission
13 to be appointed by the governor shall be four years, except
14 that the first members to be so appointed under the pro-
15 visions of this article shall take office immediately and
16 their terms shall be two, three and four years, respec-
17 tively, from July first, one thousand nine hundred sixty-
18 one. All members appointed by the governor shall serve
19 until their respective successors are appointed and shall
20 have qualified, and any vacancy in such membership oc-
21 curring by expiration of term or otherwise shall be filled
22 by the governor with the advice and consent of the senate.

23 The members of the commission shall receive no salary
24 or remuneration for their services as such but they shall
25 be reimbursed, out of moneys appropriated for such pur-
26 poses, for actual and necessary expenses incurred in the
27 performance of their duties as such.

28 At its first meeting the commission shall elect from its
29 membership a chairman, and at the first meeting in each
30 fiscal year thereafter the commission shall elect from its
31 membership a chairman to act during such fiscal year. At
32 similar times the commission shall appoint a secretary,
33 who need not be a member of the commission. The com-
34 mission shall employ such personnel as may be required,
35 whose duties shall be defined by the commission and
36 whose compensation, to be fixed by the commission, shall
37 be paid out of the state treasury, upon the requisition of
38 the commission, from moneys appropriated for such pur-
39 poses.

40 The commission may establish rules for the regulation
41 of its affairs and the conduct of all proceedings before it.
42 All proceedings of the commission shall be entered in a
43 permanently bound record book, properly indexed, and

44 the same shall be carefully preserved. Copies of orders
45 entered by the commission, as well as copies of papers or
46 documents filed with it, or the records of proceedings be-
47 fore the commission, shall be attested by the secretary of
48 the commission. The commission shall meet at such times
49 and places as may be agreed upon by the commissioners,
50 or upon the call of the chairman of the commission or any
51 two commissioners, all of which meetings shall be general
52 meetings for the consideration of any and all matters
53 which may properly come before the commission.

Sec. 5. *Same; Powers and Duties of Commission Gen-
2 erally; Rules and Regulations; Public Hearings.*—The
3 commission is hereby authorized and empowered:

4 (1) To develop ways and means for the regulation and
5 control of pollution of the air of the state;

6 (2) To advise, consult and cooperate with other agen-
7 cies of the state, political subdivisions of the state, other
8 states, agencies of the federal government, industries,
9 and with affected groups in furtherance of the declared
10 purposes of this article;

11 (3) To encourage and conduct such studies and re-
12 search relating to air pollution and its control and abate-
13 ment as the commission may deem advisable and neces-
14 sary;

15 (4) To adopt and to promulgate reasonable regulations,
16 not inconsistent with the provisions of this article, re-
17 lating to the control of air pollution: *Provided, however,*
18 *That no rule or regulation of the commission shall specify*
19 *the design of equipment, type of construction, or par-*
20 *ticular method which a person shall use to reduce the*
21 *discharge of air pollutants, nor shall any such rule or*
22 *regulation apply to any aspect of an employer-employee*
23 *relationship;*

24 (5) To enter orders requiring compliance with the
25 provisions of this article and the regulations lawfully
26 promulgated hereunder;

27 (6) To consider complaints, subpoena witnesses, ad-
28 minister oaths, make investigations, and hold hearings
29 relevant to the promulgation of regulations and the entry
30 of compliance orders hereunder;

31 (7) To encourage voluntary cooperation by municipi-

32 palities, counties, industries and others in preserving the
33 purity of the air within the state;

34 (8) To employ personnel, including specialists and
35 consultants, purchase materials and supplies, and enter
36 into contracts necessary, incident or convenient to the
37 accomplishment of the purposes of this article;

38 (9) To enter at reasonable times upon any private or
39 public property for the purpose of investigating an alleged
40 statutory air pollution: *Provided, however,* That no such
41 investigation shall extend to information relating to secret
42 processes or methods of manufacturing or production;

43 (10) Upon reasonable evidence of a violation of this
44 article, which presents an imminent and serious hazard
45 to public health, to give notice to the public or to that
46 portion of the public which is in danger by any and all
47 appropriate means;

48 (11) To cooperate with, receive and expend money
49 from the federal government and other sources;

50 (12) To represent the state in any and all matters per-
51 taining to plans, procedures and negotiations for interstate
52 compacts in relation to the control of air pollution; and

53 (13) The commission may appoint technical advisory
54 councils from such areas of the state as it may determine.
55 Each such council so appointed shall consist of not more
56 than five members for each area so designated, at least
57 two of whom shall be truly representative of industries
58 operating within such area, and may advise and consult
59 with the commission about all matters pertaining to the
60 regulation, control and abatement of air pollution within
61 such area.

62 No rule or regulation of the commission pertaining to
63 the control, reduction or abatement of air pollution shall
64 become effective until after at least one public hearing
65 thereon shall have been held by the commission within
66 the state. Notice to the public of the time and place of
67 any such hearing shall be given by the commission at
68 least thirty days prior to the scheduled date of such hear-
69 ing by advertisement published once a week for two
70 successive weeks in at least one daily newspaper of gen-
71 eral circulation in the county wherein such hearing is to
72 be held. Full opportunity to be heard shall be accorded

73 to all persons in attendance and any person, whether or
74 not in attendance at such hearing, may submit in writing
75 his views with respect to any such rule or regulation to the
76 commission within thirty days after such hearing. The
77 proceedings at the hearing before the commission shall
78 be recorded by mechanical means or otherwise as may
79 be prescribed by the commission. Such record of proceed-
80 ings need not be transcribed unless requested by an inter-
81 ested party, in which event the prevailing rates for such
82 transcripts will be required from such interested party.
83 The commission may, in its discretion, solicit the com-
84 ments in writing of any person who may be affected by or
85 interested in such proposed rules and regulations.

Sec. 6. *Notice of Alleged Violations; Hearings; Factors*
2 *Considered; Orders of Commission; Petitions to Modify or*
3 *Vacate Order; Confirming or Modifying Order; When*
4 *Order Final; Record of Proceedings.*—If, from any investi-
5 gation made by it or from any complaint filed before it,
6 the commission shall be of the opinion that there is suffi-
7 cient cause to believe that a person may be violating the
8 provisions of this article, the commission may give written
9 notice to such person to appear before the commission
10 at a time and place, within the county wherein the pollu-
11 tion is alleged to have originated, to be specified in such
12 notice, then and there to show cause, if any shall exist,
13 why said commission should not enter an order finding
14 that such person has violated the provisions of this article
15 and regulating or controlling the alleged pollution. The
16 said notice shall with reasonable particularity specify the
17 nature of the alleged air pollution which is to be the sub-
18 ject of inquiry at such hearing. No such hearing shall be
19 held less than thirty days from the date of said notice.
20 Any such notice may be served and returned in the same
21 manner as a summons in a civil action or may be served
22 by sending a copy thereof by registered mail addressed to
23 the person or persons alleged to be causing such pollution
24 at his and/or its usual, or last known, postoffice address.
25 Any person to whom such notice has been given, may
26 appear in person or by counsel at the hearing and adduce
27 evidence in answer to the alleged violation.

28 In any proceeding under this article the commission
29 shall consider all pertinent factors, including a balancing
30 of the conflicting interests and equities involved, the
31 availability and practicality of control devices, the physical and economic feasibility of eliminating, controlling
32 or reducing the alleged pollution, the nature of the locality affected by the alleged pollution, the reasonableness
33 of existing conditions and such other factors as may appear to the commission to be consonant with the policy
34 declared in section one of this article.

38 Consistent with the evidence adduced at the hearing
39 and a consideration of the aforesaid factors, the commission shall enter such order as in its opinion will best promote the declared policy of this article. Such order shall
40 contain specific findings of fact with respect to all factors
41 considered by the commission and shall require that the
42 statutory air pollution, if any be found, be corrected within a reasonable period of time to be fixed therein. A true
43 copy of such order shall be promptly served, either by
44 service as a summons in a civil action or by registered mail
45 as aforesaid, upon all persons substantially affected by
46 such order. Within twenty days after service of such
47 order, any person substantially affected thereby may file
48 with the secretary of the commission a petition in writing
49 requesting the commission to modify or vacate such order.
50 The petition shall assign the grounds relied upon by the
51 petitioner in support of a modification or vacation of such
52 order. The commission shall thereupon reconsider its original order and shall, within twenty days after the filing of
53 the petition, enter of record an order confirming, modifying or vacating the original order. A true copy of such
54 order shall be promptly served upon all persons substantially affected thereby in the same manner as the original
55 order was served. Any order of the commission entered
56 hereunder shall become final and conclusive upon all persons affected thereby unless an appeal therefrom is taken
57 in the manner provided in section seven of this article.

65 The proceedings at any such hearing shall be recorded
66 by mechanical means or otherwise as may be prescribed
67 by the commission: *Provided, however,* That the proceedings shall be taken by a stenographer appointed by

69 the commission upon demand of any interested person. A
70 copy of such transcript shall be furnished on demand to
71 any person substantially affected upon payment of the fee
72 prescribed therefor in the rules and regulations of the
73 commission, such fee not to exceed that prescribed for
74 transcripts in the circuit court.

Sec. 7. *Appeals from Orders of Commission; Procedure;*
2 *Jurisdiction.*—Any person whose interest shall have been
3 substantially affected by an order of the commission may
4 appeal from such order or decision by filing with the
5 commission a written notice of appeal. Such notice shall
6 be filed within thirty days from the date notice of the
7 order or decision of the commission was given to such
8 person, and shall be signed by him or his attorney. Within
9 thirty days from the receipt of the notice of appeal, the
10 commission shall prepare and forward to the appellant
11 or his attorney a copy of a full transcript of the proceed-
12 ings, together with a copy of the order or decision of the
13 commission and a copy of the notice of appeal, and at the
14 same time shall file a transcript of the proceedings before
15 the commission and the other documents mentioned above
16 with the clerk of the circuit court herein designated. All
17 documents shall be duly certified by the secretary of the
18 commission. The court shall thereafter have complete
19 jurisdiction of the matter.

20 The appeal shall be taken to the circuit court of the
21 county wherein the alleged statutory air pollution com-
22 plained of originated. The circuit court to which any such
23 appeal shall have been taken, or the judge thereof, shall
24 fix a time for the hearing of the appeal and shall, after
25 such hearing, without a jury, by order entered of record,
26 affirm, modify or set aside in whole or in part the order of
27 the commission. The said court shall make findings of
28 fact and conclusions of law based upon the transcript of
29 the proceedings before the commission and upon any addi-
30 tional evidence adduced before said court, the right to
31 adduce such additional evidence being hereby reserved
32 to the commission or to any person substantially affected
33 by the order of the commission. In the event the circuit
34 court shall affirm or modify the commission's order that

35 a statutory air pollution exists under the provisions of
36 this article, the order of the court shall specify that such
37 pollution shall be corrected within a reasonable period of
38 time to be fixed therein. The commission or any person
39 whose interests shall have been substantially affected by
40 the final order of the circuit court may appeal to the su-
41 preme court of appeals in the manner prescribed by
42 law.

43 An appeal to a circuit court or to the supreme court of
44 appeals shall serve to stay the order of the commission or
45 circuit court, as the case may be, pending final determi-
46 nation thereof.

Sec. 8. *Penalties.*—(a) Any person who shall fail or re-
2 fuse to comply with any lawful order of the commission to
3 correct a statutory air pollution within the time fixed by
4 such order, or any extension of time granted by the com-
5 mission, shall be subject to a penalty of not more than one
6 hundred dollars for each day that such failure or refusal
7 continues after such time has expired, which penalty may
8 be recovered in a civil action brought by the commission
9 in the name of the state of West Virginia in the circuit
10 court of any county wherein such person resides or is en-
11 gaged in the activity complained of. The amount of the
12 penalty shall be fixed by the court without a jury. The
13 amount of any such penalties collected by the commission
14 shall be deposited in the general fund of the state treasury
15 according to law. Upon a request in writing from the com-
16 mission, it shall be the duty of the prosecuting attorney
17 of the county in which any such action for penalties ac-
18 cruing under this section may be brought to institute and
19 prosecute all such actions on behalf of the commission.

20 (b) For the purpose of this section, violations on sep-
21 arate days shall be considered separate offenses.

Sec. 9. *Applications for Injunctive Relief.*—In addition
2 to the remedy provided for in section eight of this article
3 and in the absence of reasonable progress toward correc-
4 tion of the statutory air pollution, the commission may
5 request the prosecuting attorney of the county in which
6 the defendant resides or is engaged in the activity com-
7 plained of to apply to the circuit court of such county for

8 an injunction to restrain all violations of any final order
9 of the commission entered pursuant to section six of this
10 article.

Sec. 10. *Emergencies; Powers of Commission; Procedure.*—Whenever air pollution conditions in any area
2 of the state become such as, in the opinion of the commis-
3 sion, to create an emergency and to require immediate
4 action for the protection of the public health, the com-
5 mission may, with the written approval of the governor,
6 so find and enter such order as it deems necessary to re-
7 duce or prevent the emission of air pollutants substan-
8 tially contributing to such conditions. In any such order
9 the commission shall also fix a time, not later than twenty-
10 four hours thereafter, and place for a hearing to be held
11 before it for the purpose of investigating and determining
12 the factors causing or contributing to such conditions.
13 A true copy of any such order shall be served upon per-
14 sons whose interests are directly prejudiced thereby in
15 the same manner as a summons in a civil action may be
16 served, and a true copy of such order shall also be posted
17 on the front door of the courthouse of the county in which
18 the alleged conditions originated. All persons whose in-
19 terests are prejudiced or affected in any manner by any
20 such order shall have the right to appear in person or by
21 counsel at the hearing and to present evidence relevant to
22 the subject of the hearing. Within twenty-four hours after
23 completion of the hearing the commission shall affirm,
24 modify or set aside said order in accordance and consistent
25 with the evidence adduced. Any person aggrieved by such
26 action of the commission may thereafter apply by petition
27 to the circuit court of the county for a review of the com-
28 mission's action. The circuit court shall forthwith fix a
29 time for a hearing de novo upon the petition and shall,
30 after such hearing, by order entered of record, affirm,
31 modify or set aside in whole or in part the order and ac-
32 tion of the commission. Any person whose interests shall
33 have been substantially affected by the final order of the
34 circuit court may appeal the same to the supreme court
35 of appeals in the manner prescribed by law.
36

Sec. 11. *Powers Reserved to State Board of Health,*
2 *Local Health Boards and Political Subdivisions; Conflict-*

3 *ing Statutes Repealed.*—Nothing in this article shall affect
4 or limit the powers or duties heretofore conferred by the
5 provisions of this chapter upon the state board of health,
6 county health boards, county health officers, municipal
7 health boards, municipal health officers, combined boards
8 of health or any other health agency or political sub-
9 division of this state except insofar as such powers and
10 duties might otherwise be hereafter deemed to apply to
11 the control, reduction or abatement of air pollution. All
12 existing statutes or parts of statutes are, to the extent of
13 their inconsistencies with the provisions of this article
14 and to the extent that they might otherwise be deemed
15 to apply to the control, reduction or abatement of air
16 pollution, hereby repealed: *Provided, however,* That no
17 ordinance heretofore adopted by any municipality re-
18 lating to the control, reduction or abatement of air pollu-
19 tion shall be deemed repealed by this article.

Sec. 12. *Severability.*—The provisions of this article are
2 severable and if any provision, section or part thereof shall
3 be held invalid, unconstitutional or inapplicable to any
4 person or circumstance, such invalidity, unconstitution-
5 ality or inapplicability shall not affect or impair any of
6 the remaining provisions, sections or parts of the article or
7 their application to him or to other persons and circum-
8 stances. It is hereby declared to be the legislative intent
9 that this article would have been adopted if such invalid
10 or unconstitutional provision, section or part had not been
11 included therein.

Sec. 13. *Effective Date of Rules and Regulations.*—The
2 rules and regulations promulgated pursuant to the pro-
3 visions of this article shall be of no effect until one
4 year after the effective date of this article.

CHAPTER 64

(House Bill No. 269—By Mr. Poindexter and Mr. Kincaid)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend and reenact section five, article three, chap-
ter thirty-three of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to capital or surplus required of insurance companies.

Article 3. Licensing, Fees and Taxation of Insurers.

Section

5. Capital or surplus required.

Be it enacted by the Legislature of West Virginia:

That section five, article three, 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:

Section 5. *Capital or Surplus Required.*—To qualify for
 2 a license to transact insurance, unless otherwise provided
 3 in this chapter, an insurer shall possess paid-in capital
 4 stock (if a stock insurer) or surplus (if a mutual insurer)
 5 in the amount set forth below opposite the kinds of insur-
 6 ance for which license is requested:

7 (a) Life	\$200,000.00
8 (b) Accident and Sickness.....	\$200,000.00
9 (c) Life and Accident and Sickness.....	\$300,000.00
10 (d) Fire and Marine.....	\$100,000.00
11 (e) Casualty	\$100,000.00
12 (f) Surety	\$600,000.00
13 (g) Accident and Sickness together with	
14 any one or more of the following: Fire and	
15 Marine, Casualty.....	\$300,000.00
16 (h) Fire and Marine and Casualty.....	\$200,000.00
17 (i) Surety together with any one or more	
18 of the following: Accident and Sickness, Fire	
19 and Marine, Casualty	\$600,000.00

20 In addition, every insurer shall maintain additional sur-
 21 plus funds in an amount equal to one half such minimum
 22 capital or surplus listed above for the kinds of insurance
 23 for which license is requested: *Provided*, That domestic
 24 insurers duly licensed to transact insurance in West Vir-
 25 ginia on March thirtieth, one thousand nine hundred sixty-
 26 one, shall have until March thirty-first, one thousand nine
 27 hundred sixty-five, to meet the requirements of the addi-
 28 tional surplus funds in the amount herein specified.

CHAPTER 65

(Senate Bill No. 203—By Mr. McCourt)

[Passed March 1, 1961; in effect July 1, 1961. Approved by the Governor.]
Governor.]

AN ACT to amend and reenact section fourteen-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional insurance premium tax.

Article 3. Licensing, Fees and Taxation of Insurers.

Section

14-a. Additional premium tax.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, article three, 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:

Section 14-a. *Additional Premium Tax.*—For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one per cent of such gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of such additional tax.

All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him into the state treasury for the benefit of the state fund.

The provisions of this section shall expire June thirty, one thousand nine hundred sixty-two.

CHAPTER 66

(House Bill No. 270—By Mr. Poindexter and Mr. Kincaid)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to articles of incorporation of domestic stock or mutual insurance companies.

Article 5. Organization and Procedures of Domestic Stock and Mutual Insurers.

Section

3. Articles of incorporation.

Be it enacted by the Legislature of West Virginia:

That section three, article five, 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:

Section 3. *Articles of Incorporation.*—In addition to the matters and things required generally in articles of incorporation, those of a domestic stock or mutual insurer shall state:

- (a) The name of the corporation;
- (b) The duration of its existence, which may be perpetual;
- (c) The kinds of insurance the corporation is formed to transact according to the definitions thereof in this chapter;
- (d) If a stock insurer, its authorized capital, the classes and number of shares into which divided, the par value of each such share, and the respective rights of each such class. Shares without par value shall not be authorized;
- (e) If a mutual insurer, the maximum contingent liability of its members (other than as to nonassessable policies) for payment of losses and expenses incurred, which

18 liability shall be as stated in the articles of incorporation
19 but not less than one nor more than six times the premium
20 for the member's policy at the annual premium rate for
21 a term of one year;

22 (f) The number of directors, not less than five nor more
23 than twenty, who shall conduct the affairs of the corpora-
24 tion;

25 (g) The city or town in West Virginia in which is to
26 be located the principal place of business, and states and
27 countries in which business may be transacted;

28 (h) The limitations, if any, on the corporation's in-
29 debtedness;

30 (i) If a stock insurer, the extent, if any, to which its
31 stock shall be assessable;

32 (j) Such other provisions, not inconsistent with law,
33 as are deemed appropriate.

CHAPTER 67

(House Bill No. 191—By Mr. Board)

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard valuation law for life policies.

Article 7. Assets and Liabilities.

Section

9. Standard valuation law for life policies.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, 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:

Section 9. *Standard Valuation Law for Life Policies.*—

2 (1) The commissioner shall annually value, or cause to be
3 valued, the reserve liabilities (hereinafter called reserves)
4 for all outstanding life insurance policies and annuity
5 and pure endowment contracts of every life insurer
6 transacting insurance in this state, except that in the
7 case of an alien insurer such valuation shall be limited
8 to its United States business, and may certify the amount
9 of any such reserves, specifying the mortality table or
10 tables, rate or rates of interest and methods (net level
11 premium method or other) used in the calculation of such
12 reserves.

13 All valuations made by him or by his authority shall be
14 made upon the net premium basis.

15 In every case the standard of valuation employed shall
16 be stated in his annual report.

17 In calculating such reserves, he may use group methods
18 and approximate averages for fractions of a year or
19 otherwise. In lieu of the valuation of the reserves herein
20 required of any foreign or alien insurer, he may accept
21 any valuation made, or caused to be made, by the insur-
22 ance supervisory official of any state or other jurisdiction
23 when such valuation complies with the minimum stand-
24 ard herein provided and if the official of such state or
25 jurisdiction accepts as sufficient and valid for all legal
26 purposes the certificate of valuation of the commissioner
27 when such certificate states the valuation to have been
28 made in a specified manner according to which the aggre-
29 gate reserves would be at least as large as if they had been
30 computed in the manner prescribed by the law of that
31 state or jurisdiction.

32 Any such insurer which at any time shall have adopted
33 any standard of valuation producing greater aggregate
34 reserves than those calculated according to the minimum
35 standard herein provided may, with the approval of the
36 commissioner, adopt any lower standard of valuation,
37 but not lower than the minimum herein provided.

38 (2) This subsection shall apply to only those policies
39 and contracts issued prior to the original operative date
40 of the standard nonforfeiture law (now section thirty
41 of article thirteen of this chapter). All valuations shall
42 be according to the standard of valuations adopted by the

43 insurer for the obligations to be valued. Any insurer
44 may adopt different standards for obligations of different
45 dates or classes, but if the total value determined by any
46 such standard for the obligations for which it has been
47 adopted shall be less than that determined by the legal
48 minimum standard hereinafter prescribed, or if the in-
49 surer adopts no standard, said legal minimum standard
50 shall be used.

51 The legal minimum standard for contracts issued before
52 the first day of January, in the year one thousand nine
53 hundred one, shall be actuaries' or combined experience
54 table of mortality with interest at four percent per annum,
55 and for contracts issued on or after said date shall be the
56 "American Experience Table" of mortality with interest at
57 three and one-half percent per annum. Policies issued by
58 insurers doing business in this state may provide for not
59 more than one year preliminary term insurance: *Pro-*
60 *vided, however,* That if the premium charged for term
61 insurance under a limited payment life preliminary term
62 policy providing for the payment of all premiums thereof
63 in less than twenty years from the date of the policy,
64 or under an endowment preliminary term policy, exceeds
65 that charged for like insurance under twenty payment
66 life preliminary term policies of the same insurer, the
67 reserve thereon at the end of any year, including the first,
68 shall not be less than the reserve on a twenty payment
69 life preliminary term policy issued in the same year and
70 at the same age, together with an amount which shall
71 be equivalent to the accumulation of a net level premium
72 sufficient to provide for a pure endowment at the end of
73 the premium payment period, equal to the difference
74 between the value at the end of such period of such a
75 twenty payment life preliminary term policy and a full
76 reserve at such time of such a limited payment life or
77 endowment policy.

78 The commissioner may vary the standards of interest
79 and mortality in the case of alien insurers and in particu-
80 lar cases of invalid lives and other extra hazards.

81 Reserves for all such policies and contracts may be
82 calculated, at the option of the insurer, according to any

standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) This subsection shall apply to only those policies and contracts issued on or after the original operative date of the standard nonforfeiture law (now section thirty of article thirteen of this chapter).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in paragraph (b), three and one-half percent interest, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection four-a of section thirty, article thirteen of this chapter, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date: *Provided*, That for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of

122 the tables or modifications of tables specified for indi-
123 vidual annuity and pure endowment contracts.

124 (v) For total and permanent disability benefits in or
125 supplementary to ordinary policies or contracts—for poli-
126 cies or contracts issued on or after January first, one
127 thousand nine hundred sixty-six, the tables of period
128 two disablement rates and the one thousand nine hun-
129 dred thirty to one thousand nine hundred fifty termi-
130 nation rates of the one thousand nine hundred fifty-two
131 disability study of the society of actuaries, with due re-
132 gard to the type of benefit; for policies or contracts issued
133 on or after January first, one thousand nine hundred
134 sixty-one and prior to January first, one thousand nine
135 hundred sixty-six, either such tables or, at the option of
136 the company, the Class (3) Disability Table (1926); and
137 for policies issued prior to January first, one thousand
138 nine hundred sixty-one, the Class (3) Disability Table
139 (1926). Any such table shall, for active lives, be com-
140 bined with a mortality table permitted for calculating
141 the reserves for life insurance policies.

142 (vi) For accidental death benefits in or supplementary
143 to policies—for policies issued on or after January first,
144 one thousand nine hundred sixty-six, the 1959 Accidental
145 Death Benefits Table; for policies issued on or after
146 January first, one thousand nine hundred sixty-one and
147 prior to January first, one thousand nine hundred sixty-
148 six, either such table or, at the option of the company,
149 the Inter-Company Double Indemnity Mortality Table;
150 and for policies issued prior to January first, one thousand
151 nine hundred sixty-one, the Inter-Company Double In-
152 demnity Mortality Table. Either table shall be combined
153 with a mortality table permitted for calculating the re-
154 serves for life insurance policies.

155 (vii) For group life insurance, life insurance issued on
156 the substandard basis and other special benefits—such
157 tables as may be approved by the commissioner.

158 (b) Reserves according to the commissioner's reserve
159 valuation method, for the life insurance and endowment
160 benefits of policies providing for a uniform amount of

161 insurance and requiring the payment of uniform prem-
162 iums shall be the excess, if any, of the present value, at
163 the date of valuation, of such future guaranteed benefits
164 provided for by such policies, over the then present value
165 of any future modified net premiums therefor. The modi-
166 fied net premiums for any such policy shall be such uni-
167 form percentage of the respective contract premiums for
168 such benefits that the present value, at the date of issue
169 of the policy, of all such modified net premiums shall be
170 equal to the sum of the then present value of such
171 benefits provided for by the policy and the excess of
172 (A) over (B), as follows:

173 (A) A net level annual premium equal to the present
174 value, at the date of issue, of such benefits provided for
175 after the first policy year, divided by the present value,
176 at the date of issue, of an annuity of one per annum pay-
177 able on the first and each subsequent anniversary of such
178 policy on which a premium falls due: *Provided, however,*
179 That such net level annual premium shall not exceed the
180 net level annual premium on the nineteen year premium
181 whole life plan for insurance of the same amount at an age
182 one year higher than the age at issue of such policy.

183 (B) A net one-year term premium for such benefits
184 provided for the first policy year.

185 Reserves according to the commissioner's reserve valu-
186 ation method for (i) life insurance policies providing for
187 a varying amount of insurance or requiring the payment
188 of varying premiums, (ii) annuity and pure endowment
189 contracts, (iii) disability and accidental death benefits
190 in all policies and contracts, and (iv) all other benefits,
191 except life insurance and endowment benefits in life in-
192 surance policies, shall be calculated by a method con-
193 sistent with the principles of this paragraph (b), except
194 that any extra premiums charged because of impairments
195 in paragraph (b) and the mortality table or tables and
196 or special hazards shall be disregarded in the determi-
197 nation of modified net premiums.

198 (c) In no event shall an insurer's aggregate reserves
199 for all life insurance policies, excluding disability and

200 accidental death benefits, be less than the aggregate re-
201 serves calculated in accordance with the method set forth
202 in paragraph (b) and the mortality table or tables and
203 rate or rates of interest used in calculating nonforfeiture
204 benefits for such policies.

205 (d) Reserves for any category of policies, contracts
206 or benefits as established by the commissioner may be
207 calculated, at the option of the insurer, according to any
208 standards which produce greater aggregate reserves for
209 such category than those calculated according to the
210 minimum standard herein provided, but the rate or rates
211 of interest used shall not be higher than the corresponding
212 rate or rates of interest used in calculating any nonfor-
213 feiture benefits provided for therein: *Provided, however,*
214 That reserves for participating life insurance policies may,
215 with the consent of the commissioner, be calculated ac-
216 cording to rate of interest lower than the rate of interest
217 used in calculating the nonforfeiture benefits in such
218 policies, with the further proviso that if such lower rate
219 differs from the rate used in the calculation of the non-
220 forfeiture benefits by more than one-half per cent the
221 insurer issuing such policies shall file with the com-
222 missioner a plan providing for such equitable increases,
223 if any, in the cash surrender values and nonforfeiture
224 benefits in such policies as the commissioner shall approve.

225 (e) If the gross premium charged by any life insurer
226 on any policy or contract is less than the net premium
227 for the policy or contract according to the mortality table,
228 rate of interest and method used in calculating the reserve
229 thereon, there shall be maintained on such policy or con-
230 tract a deficiency reserve in addition to all other reserves
231 required by law. For each such policy or contract the
232 deficiency reserve shall be the present value, according
233 to such standard, of an annuity of the difference between
234 such net premium and the premium charged for such
235 policy or contract, running for the remainder of the
236 premium-paying period.

CHAPTER 68

(House Bill No. 192—By Mr. Board)

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standard nonforfeiture law for life insurance.

Article 13. Life Insurance.

Section

30. Standard nonforfeiture law.

Be it enacted by the Legislature of West Virginia:

That section thirty, article thirteen, 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:

Section 30. *Standard Nonforfeiture Law.*—(1) In the case of policies issued on or after the original operative date of this provision, no policy of life insurance, except as stated in subsection six, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaultering or surrendering policyholder:

(a) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;

(b) That, upon surrender of the policy within sixty days after the due date of any premium payment in de-

19 fault after premiums have been paid for at least three
20 full years, the insurer will pay, in lieu of any paid-up
21 nonforfeiture benefit, a cash surrender value of such
22 amount as may be hereinafter specified;

23 (c) That a specified paid-up nonforfeiture benefit shall
24 become effective as specified in the policy unless the per-
25 son entitled to make such election elects another avail-
26 able option not later than sixty days after the due date
27 of the premium in default;

28 (d) That, if the policy shall have become paid up by
29 completion of all premium payments or if it is continued
30 under any paid-up nonforfeiture benefit which became
31 effective on or after the third policy anniversary the in-
32 surer will pay, upon surrender of the policy within thirty
33 days after any policy anniversary, a cash surrender value
34 of such amount as may be hereinafter specified;

35 (e) A statement of the mortality table and interest
36 rate used in calculating the cash surrender values and the
37 paid-up nonforfeiture benefits available under the policy,
38 together with a table showing the cash surrender value,
39 if any, and paid-up nonforfeiture benefits, if any, avail-
40 able under the policy on each policy anniversary either
41 during the first twenty policy years or during the term of
42 the policy, whichever is shorter, such values and benefits
43 to be calculated upon the assumption that there are no
44 dividends or paid-up additions credited to the policy and
45 that there is no indebtedness to the insurer on the policy;

46 (f) A statement that the cash surrender values and the
47 paid-up nonforfeiture benefits available under the policy
48 are not less than the minimum values and benefits re-
49 quired by or pursuant to the insurance law of the state
50 in which the policy is delivered; an explanation of the
51 manner in which the cash surrender values and the paid-
52 up nonforfeiture benefits are altered by the existence of
53 any paid-up additions credited to the policy or any in-
54 debtedness to the company on the policy; if a detailed
55 statement of the method of computation of the values and
56 benefits shown in the policy is not stated therein a state-
57 ment that such method of computation has been filed
58 with the insurance supervisory official of the state in
59 which the policy is delivered; and a statement of the
60 method to be used in calculating the cash surrender value

61 and paid-up nonforfeiture benefit available under the
62 policy on any policy anniversary beyond the last anni-
63 versary for which such values and benefits are consecu-
64 tively shown in the policy.

65 Any of the foregoing provisions or portions thereof,
66 not applicable by reason of the plan of insurance may, to
67 the extent inapplicable, be omitted from the policy.

68 The insurer shall reserve the right to defer the payment
69 of any cash surrender value for a period of six months
70 after demand therefor with surrender of the policy.

71 (2) Any cash surrender value available under the
72 policy in the event of default in a premium payment due
73 on any policy anniversary, whether or not required by
74 subsection one, shall be an amount not less than the ex-
75 cess, if any, of the present value, on such anniversary, of
76 the future guaranteed benefits which would have been
77 provided for by the policy, including any existing paid-up
78 additions, if there had been no default, over the sum of
79 (i) the then present value of the adjusted premiums as
80 defined in subsections four and four-a, corresponding to
81 premiums which would have fallen due on and after
82 such anniversary, and (ii) the amount of any indebted-
83 ness to the insurer on the policy. Any cash surrender
84 value available within thirty days after any policy anni-
85 versary under any policy paid up by completion of all
86 premium payments or any policy continued under any
87 paid-up nonforfeiture benefit, whether or not required
88 by subsection one, shall be an amount not less than the
89 present value, on such anniversary, of the future guar-
90 anteed benefits provided for by the policy, including any
91 existing paid-up additions decreased by any indebtedness
92 to the insurer on the policy.

93 (3) Any paid-up nonforfeiture benefit available under
94 the policy in the event of default in a premium payment
95 due on any policy anniversary shall be such that its
96 present value as of such anniversary shall be at least
97 equal to the cash surrender value then provided for by
98 the policy or, if none is provided for, that cash surrender
99 value which would have been required by this section
100 in the absence of the condition that premiums shall have
101 been paid for at least a specific period.

102 (4) Except as provided in the third paragraph of
103 this subsection, the adjusted premiums for any policy
104 shall be calculated on an annual basis and shall be such
105 uniform percentage of the respective premiums specified
106 in the policy for each policy year, excluding extra prem-
107 iums on a substandard policy, that the present value, at
108 the date of issue of the policy, of all such adjusted prem-
109 iums shall be equal to the sum of (i) the then present
110 value of the future guaranteed benefits provided for by
111 the policy; (ii) two per cent of the amount of insurance,
112 if the insurance be uniform in amount, or of the
113 equivalent uniform amount, as hereinafter defined,
114 if the amount of insurance varies with duration
115 of the policy; (iii) forty per cent of the adjusted
116 premium for the first policy year; (iv) twenty-five
117 per cent of either the adjusted premium for the first
118 policy year or the adjusted premium for a whole
119 life policy of the same uniform or equivalent uni-
120 form amount with uniform premiums for the whole of
121 life issued at the same age for the same amount of in-
122 surance, whichever is less: *Provided, however,* That in
123 applying the percentages specified in (iii) and (iv)
124 above, no adjusted premium shall be deemed to exceed
125 four per cent of the amount of insurance or uniform
126 amount equivalent thereto. The date of issue of a policy
127 for the purpose of this subsection shall be the date as of
128 which the rated age of the insured is determined.

129 In the case of a policy providing an amount of insur-
130 ance varying with duration of the policy, the equivalent
131 uniform amount thereof for the purpose of this subsec-
132 tion shall be deemed to be the uniform amount of insur-
133 ance provided by an otherwise similar policy, contain-
134 ing the same endowment benefit or benefits, if any, issued
135 at the same age and for the same term, the amount of
136 which does not vary with duration and the benefits un-
137 der which have the same present value at the date of
138 issue as the benefits under the policy: *Provided, how-*
139 *ever,* That in the case of a policy providing a varying
140 amount of insurance issued on the life of a child under
141 age ten, the equivalent uniform amount may be com-
142 puted as though the amount of insurance provided by

143 the policy prior to the attainment of age ten were the
144 amount provided by such policy at age ten.

145 The adjusted premiums for any policy providing term
146 insurance benefits by rider or supplemental policy pro-
147 vision shall be equal to (a) the adjusted premiums for
148 an otherwise similar policy issued at the same age with-
149 out such term insurance benefits, increased, during the
150 period for which premiums for such term insurance
151 benefits are payable, by (b) the adjusted premiums for
152 such term insurance, the foregoing items (a) and (b)
153 being calculated separately and as specified in the first
154 two paragraphs of this subsection except that, for the
155 purposes of (ii), (iii) and (iv) of the first such para-
156 graph, the amount of insurance or equivalent uniform
157 amount of insurance used in the calculation of the ad-
158 justed premiums referred to in (b) shall be equal to the
159 excess of the corresponding amount determined for the
160 entire policy over the amount used in the calculation
161 of the adjusted premiums in (a).

162 Except as otherwise provided in subsection four-a, all
163 adjusted premiums and present values referred to in
164 this section shall for all policies of ordinary insurance
165 be calculated on the basis of the Commissioners 1941
166 Standard Ordinary Mortality Table: *Provided*, That for
167 any category of ordinary insurance issued on female risks,
168 adjusted premiums and present values may be calculated
169 according to an age not more than three years younger
170 than the actual age of the insured. Such calculations for
171 all policies of industrial insurance shall be made on the
172 basis of the 1941 Standard Industrial Mortality Table.
173 All calculations shall be made on the basis of the rate of
174 interest, not exceeding three and one-half per cent per
175 annum, specified in the policy for calculating cash sur-
176 render values and paid-up nonforfeiture benefits: *Pro-*
177 *vided*, That in calculating the present value of any paid-
178 up term insurance with accompanying pure endowment,
179 if any, offered as a nonforfeiture benefit, the rate of mor-
180 tality assumed may be not more than one hundred and
181 thirty per cent of the rates of mortality according to such
182 applicable table: *Provided further*, That for insurance
183 issued on a substandard basis, the calculation of any such

184 adjusted premiums and present values may be based on
185 such other table of mortality as may be specified by the
186 insurer and approved by the commissioner.

187 (4-a) In the case of ordinary policies issued on or
188 after the operative date of this subsection four-a as de-
189 fined herein, all adjusted premiums and present values
190 referred to in this section shall be calculated on the basis
191 of the Commissioners 1958 Standard Ordinary Mortality
192 Table and the rate of interest, not exceeding three and
193 one-half per cent per annum, specified in the policy for
194 calculating cash surrender values and paid-up nonfor-
195 feiture benefits: *Provided*, That for any category of ordi-
196 nary insurance issued on female risks, adjusted premiums
197 and present values may be calculated according to an age
198 not more than three years younger than the actual age of
199 the insured: *Provided, however*, That in calculating the
200 present value of any paid-up term insurance with accom-
201 panying pure endowment, if any, offered as a nonforfei-
202 ture benefit, the rates of mortality assumed may be not
203 more than those shown in the Commissioners 1958 Ex-
204 tended Term Insurance Table: *Provided further*, That
205 for insurance issued on a substandard basis, the calcula-
206 tion of any such adjusted premiums and present values
207 may be based on such other table of mortality as may be
208 specified by the company and approved by the commis-
209 sioner.

210 After the effective date of this subsection four-a, any
211 company may file with the commissioner a written notice
212 of its election to comply with the provisions of this sub-
213 section after a specified date before January first, one
214 thousand nine hundred sixty-six. After the filing of
215 such notice, then upon such specified date (which shall
216 be the operative date of this subsection for such com-
217 pany), this subsection shall become operative with re-
218 spect to the ordinary policies thereafter issued by such
219 company. If a company makes no such election, the op-
220 erative date of this subsection for such company shall be
221 January first, one thousand nine hundred sixty-six.

222 (5) Any cash surrender value and any paid-up non-
223 forfeiture benefit, available under the policy in the event

224 of default in a premium payment due at any time other
225 than on the policy anniversary, shall be calculated with
226 allowance for the lapse of time and the payment of frac-
227 tional premiums beyond the last preceding policy anniver-
228 sary. All values referred to in subsections two, three, four
229 and four-a may be calculated upon the assumption that
230 any death benefit is payable at the end of the policy year
231 of death. The net value of any paid-up additions, other
232 than paid-up term additions, shall be not less than the div-
233 idends paid to provide such addition. Notwithstanding the
234 provisions of subsection two, additional benefits payable
235 (a) in the event of death or dismemberment by accident or
236 accidental means, (b) in the event of total and permanent
237 disability, (c) as reversionary or deferred reversionary
238 annuity benefits, (d) as term insurance benefits provided
239 by a rider or supplemental policy provision to which, if
240 issued as a separate policy, this subsection would not ap-
241 ply, (e) as term insurance on the life of a child or on the
242 lives of children provided in a policy on the life of a par-
243 rent of the child, if such term insurance expires before the
244 child's age is twenty-six, is uniform in amount after the
245 child's age is one, and has not become paid up by reason
246 of the death of a parent of the child, and (f) as other
247 policy benefits additional to life insurance and endow-
248 ment benefits, and premiums for all such additional bene-
249 fits, shall be disregarded in ascertaining cash surrender
250 values and nonforfeiture benefits required by this sec-
251 tion, and no such additional benefits shall be required to
252 be included in any paid-up nonforfeiture benefits.

253 (6) This section shall not apply to any reinsurance,
254 group insurance, pure endowment, annuity or reversion-
255 ary annuity contract, nor to any term policy of uniform
256 amount, or renewal thereof, of fifteen years or less ex-
257 piring before age sixty-six, for which uniform premiums
258 are payable during the entire term of the policy, nor to
259 any term policy of decreasing amount on which each ad-
260 justed premium, calculated as specified in subsections
261 four and four-a, is less than the adjusted premium so cal-
262 culated on a policy issued at the same age and for the
263 same initial amount of insurance for a term defined as
264 follows—for ages at issue fifty and under, the term shall

265 be fifteen years, thereafter, the terms shall decrease one
266 year for each year of age beyond fifty, nor to any policy
267 for which shall be delivered outside this state through
268 an agent or other representative of the insurer issuing
269 the policy.

CHAPTER 69

(House Bill No. 24—By Mr. England)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to filing insurance rates.

Article 20. Rates and Rating Organizations.

Section

4. Rate filings.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty, 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:

Section 4. *Rate Filings.*—(a) (1) Every insurer shall
2 file with the commissioner every manual of classifications,
3 rules and rates, every rating plan and every modification of
4 any of the foregoing which it proposes to use for casualty
5 insurance to which this article applies.

6 (2) Every insurer shall file with the commissioner,
7 except as to inland marine risks which by general custom
8 of the business are not written according to manual rates
9 or rating plans, every manual, minimum, class rate, rating

10 schedule or rating plan and every other rating rule and
11 every modification of any of the foregoing which it pro-
12 poses to use for fire and marine insurance to which this
13 article applies. Specific inland marine rates on risks
14 specially rated, made by a rating organization, shall be
15 filed with the commissioner.

16 (b) Every such filing shall state the proposed effective
17 date thereof and shall indicate the character and extent
18 of the coverage contemplated. When a filing is not ac-
19 companied by the information upon which the insurer
20 supports such filing, and the commissioner does not have
21 sufficient information to determine whether such filing
22 meets the requirements of this article, he shall require
23 such insurer to furnish the information upon which it
24 supports such filing and in such event the waiting period
25 shall commence as of the date such information is fur-
26 nished. The information furnished in support of a filing
27 may include (1) the experience or judgment of the in-
28 surer or rating organization making the filing, (2) its
29 interpretation of any statistical data it relies upon, (3)
30 the experience of other insurers or rating organizations
31 or (4) any other relevant factors. A filing and any sup-
32 porting information shall be open to public inspection as
33 soon as the filing is received by the commissioner. Any in-
34 terested party may file a brief with the commissioner sup-
35 porting his position concerning the filing. Any person or
36 organization may file with the commissioner a signed
37 statement declaring and supporting his or its position
38 concerning the filing. Upon receipt of such statement
39 prior to the effective date of the filing, the commissioner
40 shall mail or deliver a copy of such statement to the filer,
41 which may file such reply as it may desire to make. This
42 section shall not be applicable to any memorandum or
43 statement of any kind by any employee of the commis-
44 sioner.

45 (c) An insurer may satisfy its obligation to make such
46 filings by becoming a member of, or a subscriber to, a
47 licensed rating organization which makes such filings,
48 and by authorizing the commissioner to accept such
49 filings on its behalf: *Provided*, That nothing contained
50 in this article shall be construed as requiring any insurer

51 to become a member of, or a subscriber to, any rating or-
52 ganization.

53 (d) The commissioner shall review filings as soon as
54 reasonably possible after they have been made in order
55 to determine whether they meet the requirements of this
56 article.

57 (e) Subject to the exceptions specified in paragraphs

58 (f) and (g) of this section, each filing shall be on file for
59 a waiting period of thirty days before it becomes effec-
60 tive, which period may be extended by the commissioner
61 for an additional period not to exceed fifteen days if he
62 gives written notice within such waiting period to the
63 insurer or rating organization which made the filing that
64 he needs such additional time for the consideration of
65 such filing. Upon written application by such insurer or
66 rating organization, the commissioner may authorize a
67 filing which he has reviewed to become effective before
68 the expiration of the waiting period or any extension
69 thereof. A filing shall be deemed to meet the require-
70 ments of this article unless disapproved by the com-
71 missioner within the waiting period or any extension
72 thereof.

73 (f) Any special filing with respect to a surety bond
74 required by law or by court or executive order or by
75 order, rule or regulation of a public body, not covered by
76 a previous filing, shall become effective when filed and
77 shall be deemed to meet the requirements of this article
78 until such time as the commissioner reviews the filing
79 and so long thereafter as the filing remains in effect.

80 (g) Specific inland marine rates on risks specially
81 rated by a rating organization shall become effective when
82 filed and shall be deemed to meet the requirements of this
83 article until such time as the commissioner reviews the
84 filing and so long thereafter as the filing remains in
85 effect.

86 (h) Under such rules and regulations as he shall
87 adopt the commissioner may, by written order, suspend or
88 modify the requirement of filing as to any kind of in-
89 surance, subdivision or combination thereof, or as to
90 classes of risks, the rates for which cannot practicably
91 be filed before they are used. Such orders, rules and
92 regulations shall be made known to insurers and rating

93 organizations affected thereby. The commissioner may
94 make such examination as he may deem advisable to
95 ascertain whether any rates affected by such order meet
96 the standards set forth in paragraph (b) of section three
97 of this article.

98 (i) Upon the written application of the insured, stat-
99 ing his reasons therefor, filed with and approved by the
100 commissioner, a rate in excess of that provided by a filing
101 otherwise applicable may be used on any specific risk.

102 (j) No insurer shall make or issue a contract or policy
103 except in accordance with the filings which are in effect
104 for said insurer as provided in this article or in accord-
105 ance with paragraphs (h) or (i) of this section. This
106 paragraph shall not apply to contracts or policies for
107 inland marine risks as to which filings are not required.

CHAPTER 70

(Com. Sub. for House Bill No. 131—Originating in the
House Committee on the Judiciary)

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and five, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article seventeen by adding thereto a new section, designated section twelve-a, all relating to fees of justices of the peace and constables.

Article 17. Fees, Fines and Costs.

Section

1. Fees of justices in civil cases.
2. Fees of constables in civil cases.
5. Prepayment of fees.
- 12-a. Fees of constable for services in connection with vehicular wrecks or collisions upon public highways.

Be it enacted by the Legislature of West Virginia:

That sections one, two and five, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that

said article seventeen be further amended by adding thereto a new section, designated section twelve-a, all to read as follows:

Section 1. <i>Fees of Justices in Civil Cases.</i> —A justice of	
the peace shall charge and shall collect in advance from	
the party or parties requesting such service the following	
fees:	
(1) For entering and trying any civil suit and	
the issuance of all papers including distress warrant	
and attachment orders and the performance of all	
other services in connection with any such civil	
suit whether the suit be contested or uncontested	
and whether or not the suit be completed or discontinued but excepting services in connection with	
executions or garnishments and suggestee executions	\$5.00
(2) For all services in connection with an execution on judgment, suggestion on judgment, execution and garnishment whether execution be without	
garnishment or there be both execution and garnishment or suggestee execution	2.50
(3) For each bond filed in a case, appeal bond, stay-of-execution bond, bail bond, civil order of arrest, detenure bond, except bond in attachment case	
and docketing same	1.00
(4) For taking depositions of witnesses if done in an hour or less	1.00
(5) If not completed in an hour, for additional time at the rate, per hour of	1.00
(6) For taking an inquest on a dead body, to be audited and paid from the treasury of the county	5.00
(7) Order of appraisement, appointing appraisers, swearing of the same and docketing same, to be paid by plaintiff	1.00
(8) For taking and certifying acknowledgment of deed or other instrument of writing	.50

Sec. 2. *Fees of Constables in Civil Cases.*—Every constable shall charge and collect in advance from the party or parties requesting such services the following fees in civil cases:

(1) For service and return of summons to commence a suit \$2.00, and for every additional sum-

7	mons in same suit.....	.75
8	(2) For servicing and returning order of attach-	
9	ment, for each garnishee summoned.....	1.00
10	(3) For taking property under order of attach-	
11	ment, including inventory and appraisement, be-	
12	sides the reasonable expenses of removing, securing	
13	and keeping the property attached.....	2.50
14	(4) For subpoenas, for each person served there-	
15	with50
16	(5) For summoning and returning a jury.....	1.50
17	(6) For levying an execution on personal prop-	
18	erty and return.....	2.00
19	(7) For posting notices of sale (3) for suggestee	
20	execution, suggestion order, attachment, distress	
21	warrant, each.....	.40
22	(8) For money collected and paid to justice, con-	
23	stable or plaintiff, after levy, under execution, sug-	
24	gestee execution, suggestion order, distress warrant	
25	or attachment, sale or no sale.....	5%
26	(9) For executing a writ of possession under	
27	section ten, article one of this chapter.....	4.00
28	(10) For summoning the jury and witnesses for	
29	inquest on a dead body, to be audited and paid from	
30	the treasury of the county.....	3.00
31	(11) <i>Provided, however, That in an action</i>	
32	brought before a justice to recover a sum of money	
33	where an attachment, garnishment or suggestion	
34	order is issued against the wages of a defendant, the	
35	maximum fee to be charged by the constable for	
36	said attachment, garnishment, or suggestion order	
37	shall be two dollars and fifty cents	2.50
38	(12) Second summons in attachment, each.....	1.00
39	(13) Extra time necessary in taking and remov-	
40	ing property under attachment order, and eviction	
41	execution, distress warrant or writ of detinue.....	1.00
42	(14) For delivering a temporary or permanent	
43	release50

Sec. 5. *Prepayment of Fees.*—For any service rendered
 2 by virtue of his office, for which a fee is allowed by law,
 3 except fees chargeable to the state or county, the justice
 4 or constable shall require the proper fee to be paid before
 5 the service is rendered.

Sec. 12-a. *Fees of Constable for Services in Connection with Vehicular Wrecks or Collisions upon Public Highways.*—In addition to the fees of constables in civil cases and in criminal cases elsewhere provided for, each constable shall be entitled to a fee of one dollar and fifty cents per hour or any part thereof for his time actually spent at the scene of a vehicular wreck or collision upon a public highway in his district and county at the request of a member of the department of public safety in preserving and restoring order and the orderly and safe flow of traffic and caring for the safety of persons or property, in connection with any vehicular wreck or collision upon a public highway of the state in the magisterial district and county from which said constable is elected: *Provided*, That no more than one constable shall be entitled to payment of the fee herein authorized as to any one wreck or collision and that no more than two hours' time shall be claimed for any one such event.

The constable shall submit his claim for such fee with his criminal fee bill, and for it to be a valid claim there must accompany such fee bill the certificate of the appropriate members of the department of public safety who requested the constable to act, that such officer did so request and that the constable did so act in preserving and restoring order, etc., for the time claimed. Such fee shall be charged and paid as provided in section fifteen, article five, chapter seven of the code.

CHAPTER 71

(House Bill No. 105—By Mr. Board and Mr. Barker, by request)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to the salaries for justices of the peace in lieu of fees in counties of over two hundred thousand population.

Article 19. Provisions Applicable to Certain Counties.**Section**

1. Counties to which article applicable; salaries of justices in lieu of fees; amounts; population figures.
2. Clerk and clerical help for justices; duties of clerk; accounting for and remission of fees; civil fees payable in advance.
3. County court to furnish office space, etc., and pay salaries; additional compensation to circuit clerk.
4. Time courts to remain open.
5. Appointment of special justice; powers and duties; oath; compensation; bond.
6. Payments for services of constables in lieu of fees; itemized statement.
7. Audit of justices' books by tax commissioner; reimbursement for services; disposition of moneys remaining in justices' account.
8. Other provisions of law applicable.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Counties to Which Article Applicable; Salaries of Justices in Lieu of Fees; Amounts; Population Figures.*—The provisions of this article shall be applicable only to counties having a population in excess of two hundred thousand. The salaries of justices of the peace shall be payable solely out of the justices' account in the county general fund which is hereinafter provided, and shall be in the following amounts: (1) In magisterial districts having more than forty thousand population, eight thousand ten dollars; (2) in magisterial districts having more than twenty thousand but not more than forty thousand, seven thousand dollars; (3) in magisterial districts having more than five thousand but not more than twenty thousand population, five thousand dollars; (4) in magisterial districts having five thousand population or less two thousand four hundred dollars.

The population shall be according to the United States census or the estimate of the United States bureau of census as certified to the state auditor by the United States director of the census last preceding the beginning year in which the salary is payable.

The salary herein provided shall be in lieu of all fees

23 and other compensation, as provided by law, payable to
24 a justice of the peace.

Sec. 2. *Clerk and Clerical Help for Justices; Duties of Clerk; Accounting for and Remission of Fees; Civil Fees Payable in Advance.*—It shall be the duty of the circuit clerk of the county to furnish a deputy clerk and any other necessary assistance and clerical help in each justice court. The deputy shall be present at times when the court is open for business: *Provided, however,* That in districts having five thousand or less population, one deputy clerk may perform the duties for both courts in the district. It shall be the responsibility of the deputy clerk to keep all court records, including a day-to-day docket of all records of the court's work; he shall receive all fines, fees, costs, and other moneys payable to the justice under other provisions of the code, both in criminal and civil cases, and he shall be accountable to the circuit clerk of the county for all such moneys. The circuit clerk shall remit all moneys coming into his hand through the court to the county general fund to be credited to an account therein known as the justices' account. All civil fees provided by law in the justice court shall be payable in advance.

Sec. 3. *County Court to Furnish Office Space, etc., and Pay Salaries; Additional Compensation to Circuit Clerk.*—The county court shall provide solely out of the justices' account in the county general fund, the necessary office space, stationery and supplies for each justice court, shall pay the sum of three thousand dollars to the circuit clerk of the county as further compensation to the salary which he receives as provided by law for the performance of the additional duties imposed upon him by this article, shall pay the annual salary of the justice out of this account, shall pay the deputy clerk and other assistants therefrom, as well as any other necessary expenses of the court.

Sec. 4. *Time Courts to Remain Open.*—The county court shall by order entered on its books, fix a reasonable schedule of hours for each court throughout the county to remain open so that some court in each magisterial district shall be open for business at all times between the hours of nine o'clock a.m. and eight o'clock p.m.,

7 Monday through Saturday, inclusive, holidays excepted;
8 it shall provide for alternating the hours of two courts
9 in a magisterial district on a monthly basis. The fixing
10 of the hours within which a court shall remain open shall
11 in no way preclude the court from functioning at any
12 other time if the justice deems it necessary.

Sec. 5. *Appointment of Special Justice; Powers and Duties; Oath; Compensation; Bond.*—The judge of any court
2 of record exercising appellate jurisdiction from a justice
3 court, either civil or criminal, or both, may, in the absence,
4 sickness, or inability of a justice to act, appoint a special
5 justice to sit during the absence, sickness or inability to
6 act of the regular justice, who shall have all the powers
7 and duties of the regular justice, but before assuming
8 such powers and duties, he shall take the oath prescribed
9 by the West Virginia constitution for public officials. A
10 special justice shall be paid out of the justices' account
11 of the county general fund, the salary of the regular
12 justice based upon the number of days he serves during
13 the month as a special justice. Any special justice so
14 appointed shall before he acts as said special judge be
15 bonded in the same manner and in the same amount as a
16 regularly elected justice.

Sec. 6. *Payments for Services of Constables in Lieu of Fees; Itemized Statement.*—All fees and compensation
2 provided by law payable to constables shall be paid by the
3 county court at the end of each month out of the county
4 justices' fund, and these payments shall be in lieu of all
5 fees and compensation provided by law payable directly
6 to the constable or otherwise: *Provided, however, That*
7 *before such payment is made each constable shall furnish*
8 *an itemized statement sworn to by the constable and at-*
9 *tested by the justice of the peace out of whose court the*
10 *compensation or fees were earned, showing at whose in-*
11 *stance or request the services were rendered and setting*
12 *fourth the particular amount and nature of each charge*
13 *in detail.*

Sec. 7. *Audit of Justices' Books by Tax Commissioner; Reimbursement for Services; Disposition of Moneys Remaining in Justices' Account.*—The tax commissioner shall

4 audit annually the books of each justice court within the
5 county, and he shall be reimbursed for his services by the
6 county court out of the justices' account. All other moneys
7 remaining in the county justices' account at the end of the
8 fiscal year, shall become a part of the regular county gen-
9 eral fund.

Sec. 8. *Other Provisions of Law Applicable.*—All other
2 provisions of the law relating to justice courts and its of-
3 ficers shall apply insofar as applicable and not inconsis-
4 ent herewith.

CHAPTER 72

(House Bill No. 255—By Mr. Speaker, Mr. Singleton, and
Mr. Seibert)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal article five-a, chapter twenty-one of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, and to enact in lieu thereof a new article, desig-
nated article five-a, relating to wages for construction of
public improvements.

Article 5-a. Wages for Construction of Public Improvements.

Section

1. Definitions.
2. Policy declared.
3. Fair minimum rate of wages; determination.
4. Minimum wage rate board; appointment; duties; secretary.
5. Prevailing wages established at regular intervals.
6. Contract to contain provisions relative to rate of wages to be paid.
7. Wage rates to be kept posted.
8. Wage record of contractor.
9. Penalties for violation of act.
10. Existing contracts.
11. Provisions of act severable.

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter twenty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be repealed, and a new article, designated article five-a, be en-
acted in lieu thereof, to read as follows:

Section 1. *Definitions.*— (1) The term “public authority,” as used in this article, shall mean any officer, board or commission or other agency of the state of West Virginia, or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported in whole or in part by public funds of the state of West Virginia or its political subdivisions, and this article shall apply to expenditures of such institutions made in whole or in part from such public funds.

(2) The term “construction,” as used in this article, shall mean any construction, reconstruction, improvement, enlargement, painting, decorating, or repair of any public improvement let to contract. The term “construction” shall not be construed to include temporary or emergency repairs.

(3) The term “locality” means the county where the construction is to be performed, except that if there is not available in the county a sufficient number of competent skilled laborers, workmen and mechanics to perform such construction efficiently and properly, and may include one or more counties in this state adjacent to the one in which the construction is to be performed and from which such skilled laborers, workmen and mechanics may be obtained in sufficient numbers to perform the construction. With respect to construction of public improvements with the state road commission, “locality” may be construed to include one or more counties in this state adjacent to the one in which the construction or public improvement is to be performed and from which skilled laborers, workmen and mechanics may be accessible for work on such construction on public improvements.

(4) The term “public improvement,” as used in this article, shall include all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures upon which construction may be let to contract by the state of West Virginia or any political subdivision thereof.

(5) The term “construction industry,” as used in this article, shall mean that industry which is composed of employees and employers engaged in construction of

42 buildings, roads, highways, bridges, streets, alleys, sew-
43 ers, ditches, sewage disposal plants, waterworks, airports,
44 and all other structures or works whether private or pub-
45 lic on which construction work as defined in subsection
46 (two) of this section is performed.

47 (6) The term "board" shall mean the minimum wage
48 board as constituted in this article.

49 (7) The term "employee", for the purposes of this
50 article, shall not be construed to include such persons as
51 are employed or hired by the public authority on a regular
52 or temporary basis or engaged in making temporary or
53 emergency repairs.

Sec. 2. *Policy Declared.*—It is hereby declared to be the
2 policy of the state of West Virginia that a wage of no less
3 than the prevailing hourly rate of wages for work of a
4 similar character in the locality in this state in which the
5 construction is performed, shall be paid to all workmen
6 employed by or on behalf of any public authority engaged
7 in the construction of public improvements.

Sec. 3. *Fair Minimum Rate of Wages; Determination.*—
2 Any public authority authorized to let to contract the
3 construction of a public improvement, shall, before ad-
4 vertising for bids for the construction thereof, ascertain
5 from the state commissioner of labor, the fair minimum
6 rate of wages, including fair minimum overtime and holi-
7 day pay, to be paid by the successful bidder to the laborers,
8 workmen or mechanics in the various branches or classes
9 of the construction to be performed; and such schedule of
10 wages shall be attached to and made a part of the specifi-
11 cations for the construction and shall be printed on the
12 bidding blanks when approved by the commissioner of
13 labor where the construction is to be performed by con-
14 tract. The "fair minimum rate of wages," for the intents
15 and purposes of this article, shall be the rate of wages paid
16 in the locality in this state as hereinbefore defined to the
17 majority of workmen, laborers or mechanics in the same
18 trade or occupation in the construction industry. The
19 commissioner of labor or a member of his department
20 designated by him shall assemble the data as to fair mini-
21 mum wage rates and shall file wage rates. Rates shall be
22 established and filed as hereinafter provided on January

23 one of each year. These rates shall prevail as the mini-
24 mum wage rate on all public improvements on which bids
25 are asked during the year beginning with the date when
26 such new rates are filed and until the new rates are filed,
27 the rates for the preceding year shall remain in effect:
28 *Provided, however,* That such rates shall not remain in
29 effect for a period longer than fifteen months from the
30 date they are published, but, this provision shall not affect
31 construction of a public improvement then underway.

Sec. 4. *Minimum Wage Rate Board; Appointment;
2 Duties; Secretary.*—A minimum wage rate board shall
3 consist of five members to be appointed by the governor
4 with the advice and consent of the state senate to serve
5 at the will and pleasure of the governor. The governor,
6 in making his appointments, shall name one representa-
7 tive from the state road commission, one from organized
8 labor in the building and construction trades, one from
9 the highway and heavy contractors, one from the build-
10 ing contractors and one from a municipality in this state.
11 The term of each member shall be for a period of four
12 years.

13 The members of the board shall serve without compen-
14 sation.

15 The wage rate board shall annually elect a chairman
16 from its membership, and shall sit at the call of the chair-
17 man to hear and decide appeals from determinations of
18 the commissioner of labor of fair minimum wages. The
19 wage rate board shall be empowered to establish rules
20 for the conduct of its proceedings.

21 The commissioner of labor shall designate an employee
22 of the department of labor to be the permanent secretary
23 to the minimum wage rate board who shall maintain a
24 record of all proceedings of the board. The commissioner
25 is empowered to employ any clerical or other employees
26 necessary to carry out the functions of the board.

Sec. 5. *Prevailing Wages Established at Regular Inter-
2 vals; How Determined; Hearings on Objections; Judicial
3 Review.*—(1) The department of labor, from time to time,
4 shall investigate and determine the prevailing hourly
5 rate of wages in the localities in this state. Determinations

6 thereof shall be made annually on January one of each
7 year and shall remain in effect during the successive year:
8 *Provided, however,* That such rates shall not remain in
9 effect for a period longer than fifteen months from the
10 date they are published.

11 In determining such prevailing rates, the department
12 of labor may ascertain and consider the applicable wage
13 rates established by collective bargaining agreements, if
14 any, and such rates as are paid generally within the
15 locality in this state where the construction of the public
16 improvement is to be performed.

17 (2) A copy of the determination so made, certified by
18 the secretary of the board, shall be filed immediately
19 with the secretary of state and with the department of
20 labor. Copies shall be supplied to all persons requesting
21 same within ten days after such filing.

22 (3) At any time within fifteen days after the certified
23 copies of the determination have been filed with the secre-
24 tary of state and the department of labor, any person
25 who may be affected thereby may object in writing to
26 the determination or such part thereof as he deems ob-
27 jectionable by filing a written notice with the department
28 of labor stating the specific grounds of the objection.

29 (4) Within ten days of the receipt of the objection, the
30 department of labor shall set a date for a hearing on the
31 objection. The date for the hearing shall be within thirty
32 days after the receipt of the objection. Written notice of
33 the time and place of the hearing shall be given to the
34 objectors at least ten days prior to the date set for the
35 hearing and at a time so as to enable the objectors to be
36 present.

37 (5) The department of labor at its discretion may hear
38 such written objection separately or consolidate for hear-
39 ing any two or more written objections. At the hearing
40 the department of labor shall introduce into evidence
41 the results of the investigation it instituted and such other
42 facts which were considered at the time of the original
43 determination of the fair minimum prevailing hourly
44 rate including the sources which formed the basis for its
45 determination. The department of labor or any objectors

46 thereafter may introduce such further evidence as may be
47 material to the issues.

48 (6) Within ten days of the conclusion of the hearing,
49 the department must rule on the written objections and
50 make such final determination as shall be established by
51 a preponderance of the evidence. Immediately upon such
52 final determination, the department of labor shall file a
53 certified copy of its final determination with the secretary
54 of state and with the department of labor and shall serve
55 a copy of the final determination on all parties to the
56 proceedings by personal service or by registered mail.

57 (7) Any person affected by the final determination of the
58 department of labor, whether or not such person par-
59 ticipated in the proceedings resulting in such final de-
60 termination, may appeal to the board from the final de-
61 termination of the department of labor within ten days
62 from the filing of the copy of the final determination
63 with the secretary of state. The board shall hear the ap-
64 peal within twenty days from the receipt of notice of ap-
65 peal. The hearing by the board shall be held in Charles-
66 ton. The hearing by the board shall be upon the record
67 compiled in the hearing before the department of labor
68 and the board shall have the authority to affirm, reverse,
69 amend, or remand for further evidence, the final deter-
70 mination of the department of labor. The board shall
71 render its decision within ten days after the conclusion of
72 its hearing.

73 (8) Any party to the proceeding before the board or
74 any person affected thereby may within thirty days after
75 receipt of the notice of its decision, appeal the board's
76 decision to the circuit court of the county wherever the
77 construction of a public improvement is to be performed,
78 which shall consider the case on the record made before
79 the commissioner of labor and before the board. The
80 decision of such circuit court may be appealed to the su-
81 preme court of appeals of West Virginia by any party
82 to the proceedings or by any person affected thereby in
83 the manner provided by law for appeals in civil actions.

84 (9) Pending the decision on appeal, the rates for the
85 preceding year shall remain in effect.

Sec. 6. *Contract to Contain Provisions Relative to Rate of Wages to Be Paid.*—In all cases where any public authority has ascertained a fair minimum rate or rates of wages as herein provided, and construction of a public improvement is let to contract, the contract executed between the public authority and the successful bidder shall contain a provision requiring the successful bidder and all his subcontractors to pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages as provided by this article.

Sec. 7. *Wage Rates to Be Kept Posted.*—A clearly legible statement of all fair minimum wage rates to be paid the several classes of skilled laborers, workmen and mechanics employed on the construction on the public improvement shall be kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor subject to the provisions of this article.

Sec. 8. *Wage Record of Contractor.*—The contractor and each subcontractor or the officer of the public authority in charge of the construction of a public improvement shall keep an accurate record showing the names and occupation of all such skilled laborers, workmen and mechanics employed by them, in connection with the construction on the public improvement and showing also the actual wages paid to each of the skilled laborers, workmen and mechanics, which record shall be open at all reasonable hours to the inspection of the department of labor and the public authority which let the contract, its officers and agents. It shall not be necessary to preserve such record for a period longer than three years after the termination of the contract.

Sec. 9. *Penalties for Violation of Article.*—(a) Any contractor or subcontractor who wilfully and knowingly violates any provision of this article shall be fined not less than fifty nor more than two hundred and fifty dollars.

(b) Any skilled laborer, workman or mechanic who is engaged in construction on a public improvement let to contract, who is paid less than the posted fair minimum rate of wages applicable thereto, may recover from such contrac-

10 tor or subcontractor the difference between the same and
11 the posted fair minimum rate of wages, and in addition
12 thereto, a penalty equal in amount to such difference, and
13 reasonable attorney fees. The venue of said action shall be
14 in the county where the work is performed: *Provided,*
15 *however,* That an honest mistake or error shall not be
16 construed as a basis for recovery under this subsection.

17 (c) Where skilled laborers, workmen and mechanics
18 are employed in construction on a public improvement
19 and their posted rate of wages has been determined as
20 provided by this article, it shall be unlawful for any per-
21 son, for himself or another, to request, demand or receive,
22 either before or after such skilled laborers, workmen and
23 mechanics are employed in construction on a public im-
24 provement, that they or any one of them pay over money
25 or other thing of value or pay back, return, donate, con-
26 tribute or give any part or all of their said wages, or thing
27 of value, to any person, upon the statement, representa-
28 tion or understanding that failure to comply with such
29 request or demand will prevent them or any one of them
30 from procuring or retaining employment; and any person
31 who directly or indirectly aids, requests or authorizes
32 any other person to violate any of the provisions of this
33 section shall be guilty of a misdemeanor and fined not less
34 than fifty dollars and not more than two hundred fifty
35 dollars.

Sec. 10. *Existing Contracts.*—This article shall apply
2 only to contracts for construction on public improvements
3 let after the effective date of this article, and to construc-
4 tion on public improvements for which there has been
5 determined the fair minimum wage rates as provided in
6 this article, and such determination has not been appealed
7 from as may be provided by this article.

Sec. 11 *Provisions of Article Severable.*—Each section of
2 this article and every part thereof is hereby declared to
3 be an independent section or part of a section, and if any
4 section, subsection, sentence, clause or phrase of this ar-
5 ticle shall for any reason be held unconstitutional, the
6 validity of the remaining phrases, clauses, sentences, sub-
7 sections, and sections of this article shall not be affected
8 thereby.

CHAPTER 73

(House Bill No. 50—By Mr. Speaker, Mr. Singleton, and
Mr. Seibert)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, nine, ten and eleven, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two by adding thereto a new section, to be designated section twelve, all relating to the legislative auditor.

Article 2. Legislative Auditor; Powers; Functions; Duties; Compensation.

Section

2. Definitions.
4. Duties.
9. Offices; working space.
10. Expenses.
11. Statutory references; transfer of post-audit functions.
12. Severability.

Be it enacted by the Legislature of West Virginia:

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

Section 2. *Definitions.*—For the purposes of this article:

- 2 “Committee” means the joint committee on government
- 3 and finance of the senate and house of delegates.
- 4 “Spending unit” means any department, agency, board,
- 5 commission, officer, authority, subdivision or institution
- 6 of the state government for or to which an appropriation
- 7 has been made, or is to be made by the Legislature.
- 8 “Post audit” is the audit or review of governmental
- 9 finances after they have been completed. The scope of
- 10 a post audit includes audit or review of transactions per-

11 taining to the financial operations of the various agencies
12 of government on the state level, with verification of state
13 revenues at the source and audit of expenditures all the
14 way through the work to the recipient or beneficiary of
15 the service.

Sec. 4. *Duties.*—It shall be the duty of the legislative
2 auditor to compile fiscal information for the senate and the
3 house of delegates, to make a continuous audit and analy-
4 sis of the state budget, revenues and expenditures, during
5 and between sessions of the Legislature, to make post
6 audits of the revenues and expenditures of the spending
7 units of the state government, at least once every two
8 years, if practicable, to report any misapplication of state
9 funds or erroneous, extravagant or unlawful expenditures
10 by any spending unit, to ascertain facts and to make
11 recommendations to the Legislature concerning post-audit
12 findings, the revenues and expenditures of the state and
13 of the organization and functions of the state and its
14 spending units.

15 A copy of each such report of audit when completed
16 and certified shall be filed in the office of the department
17 of finance and administration as a public record and a copy
18 shall be filed with the attorney general for any action he
19 may deem necessary.

Sec. 9. *Offices; Working Space.*—The office of the leg-
2 islative auditor shall be located at the state capitol and
3 shall be open at all reasonable times for the transaction
4 of business.

5 All state departments, institutions or other agencies of
6 the state government shall provide necessary comfort-
7 able space for the purpose of occupancy by the post
8 auditors in making audits in the various departments,
9 institutions or other agencies of the state, located con-
10 veniently at the state capitol and at the several institu-
11 tions or other agencies throughout the state.

Sec. 10. *Expenses.*—All compensation and expenses of
2 the legislative auditor and his assistants and employees
3 shall be paid out of the funds of the committee, or out
4 of such other appropriations as may be made by the
5 Legislature therefor.

Sec. 11. *Statutory References; Transfer of Post-Audit Functions.*—Whenever any statute of the state refers to an officer or agency of the state whose functions and duties are by this article transferred to another officer or agency of the state, the reference shall be understood to be made to the officer or agency, as the case may be, to which the functions and duties have been transferred.

Sec. 12. *Severability.*—If any provision hereof or the application thereof to any person, department or circumstance is held invalid, such invalidation shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

CHAPTER 74

(House Bill No. 53—By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the examination and listing of securities in the custody of the state treasurer.

Article 5. Public Securities.

Section

3. Legislative auditor to examine and list securities.

Be it enacted by the Legislature of West Virginia:

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

Section 3. *Legislative Auditor to Examine and List Securities.*—The legislative auditor annually shall, ex-

- 3 amine and list all of the securities in the custody of the
4 state treasurer. A copy of the list so examined and cer-
5 tified shall be transmitted to the state treasurer and the
6 department of finance and administration.

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CHAPTER 75

(House Bill No. 252—By Mr. Davis, of Kanawha)

[Passed March 3, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter thirty-eight, and sections two and three, article five-b, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suggestions of salary and wages of private and public employees, and providing for an increase in the amount of salary and wages exempted from such suggestions.

Article

- 5-a. Suggestions of Salary and Wages of Persons Engaged in Private Employment.
5-b. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

Be it enacted by the Legislature of West Virginia:

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

Article 5-a. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

Section

3. General provisions.

Section 3. *General Provisions.*—Upon the return of an
2 execution wholly or partly unsatisfied a judgment creditor
3 may apply to the court in which the judgment was re-

4 covered or a court having jurisdiction of the same, with-
5 out notice to the judgment debtor, for a suggestee execu-
6 tion against any money due or to become due within one
7 year after the issuance of such execution to the judgment
8 debtor as salary or wages arising out of any private em-
9 ployment. If satisfactory proof shall be made, by affidavit
10 or otherwise, of such facts and the fact that the amount
11 due or to become due as salary or wages exceeds twenty
12 dollars per week, the court, if not a court of record, or if
13 a court of record, the clerk thereof, shall issue a suggestee
14 execution against the salary or wages of the judgment
15 debtor and upon presentation of such execution by the
16 officer to whom delivered for collection to the person or
17 persons from which such salary or wages are due and
18 owing or thereafter may become due and owing to the
19 judgment debtor, the execution and the expenses thereof
20 shall become a lien and continuing levy upon the salary
21 or wages due or to become due to the judgment debtor
22 within one year after the issuance of the same, unless
23 sooner vacated or modified as hereinafter provided, to
24 an amount equal to twenty per centum thereof and no
25 more, but in no event shall the payments in satisfaction
26 of such an execution reduce the amount payable to the
27 judgment debtor to less than twenty dollars per week.
28 Only one such execution shall be satisfied, at one time,
29 except that in the event two or more such executions have
30 been served and satisfaction of the one having priority is
31 completed without exhausting the amount or the salary
32 or wages then due and payable that is subject to sug-
33 gession under this article the balance of such amount
34 shall be paid in satisfaction, in the order of their priority,
35 of junior suggestee executions against such salary or
36 wages theretofore served.

**Article 5-b. Suggestion of the State and Political Subdivisions;
Garnishment and Suggestion of Public Officers.**

Section

2. General provisions.
3. Suggestion of salary or wages.

Section 2. *General Provisions.*—Upon the return of an
2 execution wholly or partly unsatisfied a judgment creditor
3 may apply to the court in which the judgment was re-

4 covered or a court having jurisdiction of the same, with-
5 out notice to the judgment debtor, for a suggestee execu-
6 tion against any money due or to become due within one
7 year after the issuance of the same to the judgment
8 debtor from the state, a state agency, or any political
9 subdivision of the state. If satisfactory proof shall be
10 made, by affidavit or otherwise, of such facts, and, where
11 the execution is sought against salary or wages, of the
12 fact that the amount due or to become due as salary or
13 wages exceeds twenty dollars per week, the court, if not
14 a court of record, or if a court of record, the clerk thereof,
15 shall issue a suggestee execution against such money
16 due or to become due to the judgment debtor, and there
17 shall be entered on the face thereof the day and hour of
18 issuance.

19 Such execution and the expenses thereof shall, when
20 served by the officer to whom delivered for collection in
21 the manner hereinafter provided, upon the state, a state
22 agency, or political subdivision from which such money
23 is due or may thereafter become due to the judgment
24 debtor, become a lien and continuing levy upon the sums
25 due or to become due to the judgment debtor within one
26 year after the issuance of the same (but not to exceed
27 the specified amount of salary or wages as hereinafter
28 provided) unless sooner satisfied and paid, vacated or
29 modified as hereinafter provided.

30 Where more than one suggestee execution shall have
31 been issued pursuant to the provisions of this section
32 against the same judgment debtor, they shall be satisfied
33 in the order of priority in which they are served upon
34 the state, state agency, or political subdivision from which
35 such money is due or shall become due. For purposes of
36 determining such priority the time that an execution
37 served by mail, as hereinafter provided, shall be received,
38 and not the time of admission of service, shall control.
39 In the case of two or more executions received in the
40 same mail delivery priority shall be accorded the one
41 first issued.

2 *Sec. 3. Suggestion of Salary or Wages.*—A suggestee
3 execution issued under this article against salary or wages
shall become a lien and continuing levy upon sums due

4 or to become due to the judgment debtor as salary or
5 wages to an amount equal to twenty per centum thereof
6 and no more, but in no event shall the payments in satis-
7 faction of such an execution reduce the amount payable
8 to the judgment debtor to less than twenty dollars per
9 week. A suggestee execution against salary or wages
10 shall contain the name of the judgment debtor and the
11 bureau, office, department, institution or subdivision
12 thereof of the state or political subdivision of the state,
13 as the case may be, of which he is an officer or employee.
14 If a person so employed shall resign or be dismissed while
15 an execution issued hereunder against his salary or wages
16 is wholly or partly unsatisfied, and he shall thereafter be
17 reinstated or reemployed, the execution shall lapse and
18 no further deduction shall be made with respect thereto
19 from his salary or wages unless such reinstatement or
20 reemployment shall occur within ninety days after such
21 resignation or dismissal. A suggestee execution shall not
22 be affected by the transfer of the officer or employee who
23 is the judgment debtor from one bureau, office, depart-
24 ment, institution or subdivision thereof of the state or
25 a political subdivision to another if the officer upon whom
26 service of the execution was made would be the proper
27 officer for service of a suggestee execution against salary
28 or wages due or to become due to the judgment debtor
29 in the new employment.

30 Such an execution shall not become a lien against
31 salary or wages payable by the state or a state agency
32 within ten days after the service thereof or payable by a
33 political subdivision within five days after the service
34 thereof but shall become a lien and continuing levy upon
35 the salary or wages which shall become due or owing
36 to the judgment debtor thereafter during the life of the
37 execution.

38 Only one suggestee execution against the salary or
39 wages of a judgment debtor shall be satisfied at one time,
40 except that in the event two or more such executions
41 have been served and satisfaction of the one having
42 priority is completed without exhausting the amount of
43 the salary or wages then due and payable that is subject
44 to suggestion under this article the balance of such

- 45 amount shall be paid in satisfaction, in the order of their
46 priority, of junior suggestee executions against such salary
47 or wages theretofore served.

CHAPTER 76

(House Bill No. 282—By Mr. Speaker, Mr. Singleton,
and Mr. Seibert)

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to trust receipts and trust receipts financing, by adopting the Uniform Trust Receipts Act.

Article 15. Uniform Trust Receipts Act.

Section

1. Definitions.
2. What constitutes trust receipt transaction and trust receipt.
3. Attempted creation or continuance of pledge without delivery or retention of possession.
4. Contract to give trust receipt.
5. Validity between the parties.
6. Repossession, and entruster's rights on default.
7. General effect of entruster's filing or taking possession.
8. Validity against creditors.
9. Limitations on entruster's protection against purchasers.
10. Entruster's right to proceeds.
11. Liens in course of business good against entruster.
12. Entruster not responsible on sale by trustee.
13. Filing and refiling concerning trust receipt transactions covering documents or goods.
14. Limitations on extent of obligation secured.
15. Act not applicable to certain transactions.
16. Election among filing statutes.
17. Cases not provided for.
18. Uniformity of interpretation.
19. Constitutionality.
20. Short title.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new article, designated article fifteen, to read as follows:

Section 1. *Definitions*.—In this article, unless the context or subject matter otherwise requires:

“Buyer in the ordinary course of trade” means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee’s liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for cash or on credit.

“Buyer in the ordinary course of trade” does not include a pledgee, or mortgagee, a lienor, or a transferee in bulk.

“Document” means any document of title to goods.

“Entruster” means the person who has, or directly or by agent takes, a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

“Goods” means any chattels personal other than money, things in action, or things so affixed to land as to become a part thereof.

“Instrument” means:

(a) Any negotiable instrument as defined in the uniform negotiable instrument law and amendment thereto, or

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) Any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business or finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the instrument to be the owner. “Instrument” does not include any document of title to goods.

40 "Lien creditor" means any creditor who has acquired
41 a specific lien on the goods, documents or instruments by
42 attachment, levy, or by any other similar operation of
43 law or judicial process, including a distraining landlord.

44 "New value" includes new advances or loans made, or
45 new obligations incurred, or the release or surrender of a
46 valid and existing security interest, or the release of a
47 claim to proceeds under section ten; but "new value"
48 shall not be construed to include extensions or renewals of
49 existing obligations of the trustee, nor obligations sub-
50 stituted for such existing obligations.

51 "Person" means, as the case may be, an individual,
52 trustee, receiver or other fiduciary, partnership, corpora-
53 tion, business trust, or other association, and two or more
54 persons having a joint or common interest.

55 "Possession", as used in this article with reference to
56 possession taken or retained by the entruster, means actual
57 possession of goods, documents or instruments, or, in the
58 case of goods, such constructive possession as, by means
59 of tags or signs or other outward marks placed and re-
60 maining in conspicuous places, may reasonably be ex-
61 pected in fact to indicate to the third party in question
62 that the entruster has control over or interest in the
63 goods.

64 "Purchase" means taking by sale, conditional sale,
65 lease, mortgage, or pledge, legal or equitable.

66 "Purchaser" means any person taking by purchase. A
67 pledgee, mortgagee or other claimant of a security in-
68 terest created by contract is, insofar as concerns his specific
69 security, a purchaser and not a creditor.

70 "Security interest" means a property interest in goods,
71 documents or instruments, limited in extent to securing
72 performance of some obligation of the trustee or of some
73 third person to the entruster, and includes the interest of
74 a pledgee, and title, whether or not expressed to be
75 absolute, whenever such title is in substance taken or
76 retained for security only.

77 "Transferee in bulk" means a mortgagee or a pledgee
78 or a buyer of the trustee's business substantially as a
79 whole.

80 "Trustee" means the person having or taking possession

81 of goods, documents or instruments under a trust receipt
82 transaction, and any successor in interest of such person.
83 The use of the word "trustee" herein shall not be inter-
84 preted or construed to imply the existence of a trust or
85 any right or duty of a trustee in the sense of equity juris-
86 prudence other than as provided by this article.

87 "Value" means any consideration sufficient to support
88 a simple contract. An antecedent or preexisting claim,
89 whether for money or not, and whether against the trans-
90 feror or against another person, constitutes value where
91 goods, documents or instruments are taken either in satis-
92 faction thereof or as security therefor.

Sec. 2. *What Constitutes Trust Receipt Transaction and*

2 *Trust Receipt.*—1. A trust receipt transaction within the
3 meaning of this article is any transaction to which an en-
4 trustor and a trustee are parties, for one of the purposes
5 set forth in subsection three, whereby:

6 (a) The entruster or any third person delivers to the
7 trustee goods, documents or instruments in which the
8 entruster (i) prior to the transaction has, or for new
9 value (ii) by the transaction acquires or (iii) as the re-
10 sult thereof is to acquire promptly, a security interest; or

11 (b) The entruster gives new value in reliance upon
12 the transfer by the trustee to such entruster of a security
13 interest in instruments or documents which are actually
14 exhibited to such entruster, or to his agent in that behalf,
15 at a place of business of either entruster or agent, but
16 possession of which is retained by the trustee: *Provided,*
17 That the delivery under paragraph (a) or the giving of
18 new value under paragraph (b) either (i) be against the
19 signing and delivery by the trustee of a writing desig-
20 nating the goods, documents or instruments concerned,
21 and reciting that a security interest therein remains in
22 or will remain in, or has passed to or will pass to, the
23 entruster, or (ii) be pursuant to a prior or concurrent
24 written and signed agreement of the trustee to give such
25 a writing.

26 The security interest of the entruster may be derived
27 from the trustee or from any other person, and by pledge
28 or by transfer of title or otherwise.

29 If the trustee's rights in the goods, documents or in-

30 struments are subject to a prior trust receipt transaction,
31 or to a prior equitable pledge, section nine and section
32 three, respectively, of this article, determine the priorities.

33 2. A writing such as is described in subsection one,
34 paragraph (i), signed by the trustee, and given in or pur-
35 suant to such a transaction, is designated in this article as
36 a "trust receipt". No further formality of execution or au-
37 thentication shall be necessary to the validity of a trust
38 receipt.

39 3. A transaction shall not be deemed a trust receipt
40 transaction unless the possession of the trustee thereunder
41 is for a purpose substantially equivalent to any one of the
42 following:

43 (a) In the case of goods, documents or instruments, for
44 the purpose of selling or exchanging them, or of procuring
45 their sale or exchange; or

46 (b) In the case of goods or documents, for the purpose
47 of manufacturing or processing the goods delivered or cov-
48 ered by the documents, with the purpose of ultimate sale,
49 or for the purpose of loading, unloading, storing, shipping,
50 transshipping or otherwise dealing with them in a man-
51 ner preliminary to or necessary to their sale; or

52 (c) In the case of instruments, for the purpose of de-
53 livering them to a principal, under whom the trustee is
54 holding them, or for consummation of some transaction
55 involving delivery to a depositary or registrar, or for
56 their presentation, collection or renewal.

Sec. 3. *Attempted Creation or Continuance of Pledge
2 without Delivery or Retention of Possession.*—1. An at-
3 tempted pledge or agreement to pledge not accompanied
4 by delivery of possession, which does not fulfill the re-
5 quirements of a trust receipt transaction, shall be valid
6 as against creditors of the pledgor only as follows:

7 (a) To the extent that new value is given by the pledgee
8 in reliance thereon, such pledge or agreement to pledge
9 shall be valid as against all creditors with or without
10 notice, for ten days from the time the new value is given;

11 (b) To the extent that the value given by the pledgee
12 is not new value, and in the case of new value after the
13 lapse of ten days from the giving thereof, the pledge shall
14 have validity as against lien creditors without notice, who

15 become such as prescribed in section eight, only as of the
16 time the pledgee takes possession, and without relation
17 back.

18 2. Purchasers (including entrusters) for value and with-
19 out notice of the pledgee's interest shall take free of any
20 such pledge or agreement to pledge unless, prior to the
21 purchase, it has been perfected by possession taken.

22 3. Where, under circumstances not constituting a trust
23 receipt transaction, a person, for a temporary and limited
24 purpose, delivers goods, documents, or instruments, in
25 which he holds a pledgee's or other security interest, to
26 the person holding the beneficial interest therein, the
27 transaction has like effect with a purported pledge for
28 new value under this section.

Sec. 4. *Contract to Give Trust Receipt.*—1. A contract
2 to give a trust receipt, if in writing and signed by the
3 trustee, shall, with reference to goods, documents or in-
4 struments thereafter delivered by the entruster to the
5 trustee in reliance on such contract, be equivalent in all
6 respects to a trust receipt.

7 2. Such a contract shall as to such goods, documents, or
8 instruments be specifically enforceable against the trust-
9 tee; but this subsection shall not enlarge the scope of the
10 entruster's rights against creditors of the trustee as lim-
11 ited by this article.

Sec. 5. *Validity Between the Parties.*—Between the en-
2 trustor and the trustee the terms of the trust receipt shall,
3 save as otherwise provided by this article, be valid and en-
4 forceable. But no provision for forfeiture of the trustee's
5 interest shall be valid except as provided in subsection
6 five of section six.

Sec. 6. *Repossession and Entruster's Rights on Default.*
2 —1. The entruster shall be entitled as against the trustee
3 to possession of the goods, documents or instruments on
4 default, and as may be otherwise specified in the trust
5 receipt.

6 2. An entruster entitled to possession under the terms
7 of the trust receipt or of subsection one may take such
8 possession without legal process, whenever that is possible
9 without breach of the peace.

10 3. (a) After possession taken, the entruster shall, sub-
11 ject to subdivision (b) and subsection five, hold such
12 goods, documents or instruments with the rights and
13 duties of a pledgee.

14 (b) An entruster in possession may on or after default,
15 give notice to the trustee of intention to sell, and may,
16 not less than five days after the serving or sending of such
17 notice, sell the goods, documents or instruments for the
18 trustee's account, at public or private sale, and may at a
19 public sale himself become a purchaser. The proceeds of
20 any such sale, whether public or private, shall be applied
21 (i) to the payment of the expense thereof, (ii) to the
22 payment of the expenses of retaking, keeping and storing
23 the goods, documents, or instruments, (iii) to the satis-
24 faction of the trustee's indebtedness. The trustee shall
25 receive any surplus and shall be liable to the entruster
26 for any deficiency. Notice of sale shall be deemed suffi-
27 ciently given if in writing, and either (i) personally
28 served on the trustee, or (ii) sent by postpaid ordinary
29 mail to the trustee's last known business address.

30 (c) A purchaser in good faith and for value from an
31 entruster in possession takes free of the trustee's interest,
32 even in a case in which the entruster is liable to the
33 trustee for conversion.

34 4. Surrender of the trustee's interest to the entruster
35 shall be valid, on any terms upon which the trustee and
36 entruster may, after default, agree.

37 5. As to articles manufactured by style or model, the
38 terms of the trust receipt may provide for forfeiture of
39 the trustee's interest, at the election of the entruster, in
40 the event of the trustee's default, against cancellation of
41 the trustee's then remaining indebtedness: *Provided*, That
42 in the case of the original maturity of such an indebted-
43 ness there must be cancelled not less than eighty per cent
44 of the purchase price to the trustee or of the orig-
45 inal indebtedness, whichever is greater; or, in the case of
46 a first renewal, not less than seventy per cent, or, in the
47 case of a second or further renewal, not less than sixty
48 per cent.

Sec. 7. *General Effect of Entruster's Filing or Taking*
2 *Possession.*—1. (a) If the entruster within the period of

3 thirty days specified in subsection one of section eight
4 files as in this article provided, such filing shall be effective
5 to preserve his security interest in documents or goods
6 against all persons, save as otherwise provided by sections
7 eight, nine, ten, eleven, fourteen and fifteen of this article.

8 (b) Filing after the lapse of the said period shall be
9 valid; but in such event, save as provided in subsection
10 two (b) of section nine, the entruster's security interest
11 shall be deemed to be created by the trustee as of the
12 time of such filing, without relation back, as against all
13 persons not having notice of such interest.

14 2. The taking of possession by the entruster shall, so
15 long as such possession is retained, have the effect of
16 filing, in the case of goods or documents; and of notice
17 of the entruster's security interest to all persons, in the
18 case of instruments.

Sec. 8. *Validity against Creditors.*—1. The entruster's
2 security interest in goods, documents or instruments un-
3 der the written terms of a trust receipt transaction, shall
4 without any filing be valid as against all creditors of the
5 trustee, with or without notice, for thirty days after de-
6 livery of the goods, documents or instruments to the trus-
7 tee, and thereafter except as in this article otherwise pro-
8 vided.

9 But where the trustee at the time of the trust receipt
10 transaction has and retains instruments, or documents,
11 the thirty days shall be reckoned from the time such in-
12 struments, or documents, are actually shown to the en-
13 truster, or from the time that the entruster gives new
14 value under the transaction, whichever is prior.

15 2. Save as provided in subsection one, the entruster's
16 security interest shall be void as against lien creditors
17 who become such after such thirty-day period and with-
18 out notice of such interest and before filing.

19 (a) Where a creditor secures the issuance of process
20 which within a reasonable time after such issuance re-
21 sults in attachment of or levy on the goods, he is deemed
22 to have become a lien creditor as of the date of the iss-
23 uance of the process.

24 (b) Unless prior to the acquisition of notice by all credi-
25 tors filing has occurred or possession has been taken by

26 the entruster, (i) an assignee for the benefit of creditors,
27 from the time of assignment, or (ii) a receiver in equity
28 from the time of his appointment, or (iii) a trustee in
29 bankruptcy or judicial insolvency proceedings from the
30 time of filing of the petition in bankruptcy or judicial in-
31 solvency by or against the trustee, shall, on behalf of all
32 creditors, stand in the position of a lien creditor without
33 notice, without reference to whether he personally has
34 or has not, in fact, notice of the entruster's interest.

Sec. 9. *Limitations on Entruster's Protection against*

2 *Purchasers.*—1. [Purchasers of Negotiable Documents or
3 Instruments.] (a) Nothing in this article shall limit the
4 rights of purchasers in good faith and for value from the
5 trustee of negotiable instruments or negotiable docu-
6 ments, and purchasers taking from the trustee for value,
7 in good faith, and by transfer in the customary manner
8 instruments in such form as are by common practice pur-
9 chased and sold as if negotiable, shall hold such instru-
10 ments free of the entruster's interest; and filing under this
11 article shall not be deemed to constitute notice of the en-
12 truster's interest to purchasers in good faith and for value
13 of such documents or instruments, other than trans-
14 ferees in bulk.

15 (b) The entrusting (directly, by agent, or through the
16 intervention of a third person) of goods, documents or
17 instruments by an entruster to a trustee, under a trust
18 receipt transaction or a transaction falling within section
19 three of this article, shall be equivalent to the like entrust-
20 ing of any documents or instruments which the trustee
21 may procure in substitution, or which represent the same
22 goods or instruments or the proceeds thereof, and which
23 the trustee negotiates to a purchaser in good faith and
24 for value.

25 2. [Purchasers Not Protected Under Subsection 1.]
26 Where a purchaser from the trustee is not protected under
27 subsection one hereof, the following rules shall govern:

28 (a) [Sales by Trustee in the Ordinary Course of Trade.]

29 (i) Where the trustee, under the trust receipt trans-
30 action, has liberty of sale and sells to a buyer in the
31 ordinary course of trade, whether before or after the ex-
32 piration of the thirty-day period specified in subsection

33 one of section eight of this article, and whether or not
34 filing has taken place, such buyer takes free of the en-
35 truster's security interest in the goods so sold, and no
36 filing shall constitute notice of the entruster's security
37 interest to such a buyer.

38 (ii) No limitation placed by the entruster on the liberty
39 of sale granted to the trustee shall affect a buyer in the
40 ordinary course of trade, unless the limitation is actually
41 known to the latter.

42 (b) [Purchasers Other than Buyers in the Ordinary
43 Course of Trade.] In the absence of filing, the entruster's
44 security interest in goods shall be valid, as against pur-
45 chasers, save as provided in this section; but any pur-
46 chaser, not a buyer in the ordinary course of trade, who,
47 in good faith and without notice of the entruster's security
48 interest and before filing, either (i) gives new value before
49 the expiration of the thirty-day period specified in sub-
50 section one of section eight, or (ii) gives value after said
51 period and who in either event before filing also obtains
52 delivery of goods from a trustee shall hold the subject
53 matter of his purchase free of the entruster's security
54 interest; but a transferee in bulk can take only under (ii)
55 of this subdivision (b).

56 (c) [Liberty of Sale.] If the entruster consents to the
57 placing of goods subject to a trust receipt transaction in
58 the trustee's stock in trade or in his sales or exhibition
59 rooms, or allows such goods to be so placed or kept, such
60 consent or allowance shall have like effect as granting the
61 trustee liberty of sale.

62 3. [Purchase for New Value.] As to all cases covered
63 by this section the purchase of goods, documents or in-
64 struments on credit shall constitute a purchase for new
65 value, but the entruster shall be entitled to any debt
66 owing to the trustee and any security therefor, by reason
67 of such purchase; except that the entruster's right shall
68 be subject to any set-off or defense valid against the
69 trustee and accruing before the purchaser has actual no-
70 tice of the entruster's interest.

2 Sec. 10. *Entruster's Right to Proceeds.*—Where, under
3 the terms of the trust receipt transaction, the trustee has
no liberty of sale or other disposition, or, having liberty

4 of sale or other disposition, is to account to the entruster
5 for the proceeds of any disposition of the goods, docu-
6 ments or instruments, the entruster shall be entitled, to
7 the extent to which and as against all classes of persons
8 as to whom his security interest was valid at the time of
9 disposition by the trustee, as follows:

10 (a) To the debts described in section nine (three); and
11 also

12 (b) To any proceeds or the value of any proceeds
13 (whether such proceeds are identifiable or not) of the
14 goods, documents or instruments, if said proceeds were
15 received by the trustee within ten days prior to either
16 application for appointment of a receiver of the trustee,
17 or the filing of a petition in bankruptcy or judicial in-
18 solvency proceedings by or against the trustee, or demand
19 made by the entruster for prompt accounting; and to a pri-
20 ority to the amount of such proceeds or value; and also

21 (c) To any other proceeds of the goods, documents or
22 instruments which are identifiable, unless the provision
23 for accounting has been waived by the entruster by words
24 or conduct; and knowledge by the entruster of the ex-
25 istence of proceeds, without demand for accounting made
26 within ten days from such knowledge, shall be deemed
27 such a waiver.

Sec. 11. *Liens in Course of Business Good against En-*
2 *truster.*—Specific liens arising out of contractual acts
3 of the trustee with reference to the processing, ware-
4 housing, shipping or otherwise dealing with specific goods
5 in the usual course of the trustee's business preparatory
6 to their sale shall attach against the interest of the
7 entruster in said goods as well as against the interest of
8 the trustee, whether or not filing has occurred under this
9 article; but this section shall not obligate the entruster
10 personally for any debt secured by such lien; nor shall it
11 be construed to include the lien of a landlord.

Sec. 12. *Entruster Not Responsible on Sale by Trustee.*
2 —An entruster holding a security interest shall not.
3 merely by virtue of such interest or of his having given
4 the trustee liberty of sale or other disposition, be respon-

5 sible as principal or as vendor under any sale or contract
6 to sell made by the trustee.

Sec. 13. *Filing and Refiling Concerning Trust Receipt
2 Transactions Covering Documents or Goods.*—1. Any
3 entruster undertaking or contemplating trust receipt
4 transactions with reference to documents or goods is
5 entitled to file with the secretary of state a statement,
6 signed by the entruster and the trustee, containing:

7 (a) A designation of the entruster and the trustee, and
8 of the chief place of business of each within this state, if
9 any; and if the entruster has no place of business within
10 the state, a designation of his chief place of business out-
11 side the state; and

12 (b) A statement that the entruster is engaged, or ex-
13 pects to be engaged, in financing under trust receipt trans-
14 actions the acquisition of goods by the trustee; and

15 (c) A description of the kind or kinds of goods covered
16 or to be covered by such financing.

17 2. The following form of statement (or any other form
18 of statement containing substantially the same informa-
19 tion) shall suffice for the purposes of this article:

20 "Statement of Trust Receipt Financing

21 "The entruster, _____ whose chief place
22 of business within this state is at _____, (or
23 who has no place of business within this state and whose
24 chief place of business outside this state is at _____,)
25 is or expects to be engaged in financing under trust re-
26 ceipt transactions the acquisition by the trustee, _____
27 _____ whose chief place of business within this state
28 is at _____ of goods of the following
29 description:

30 [coffee, silk, automobiles, or the like.]

31 [Signed] _____ Entruster

32 [Signed] _____ Trustee."

33 3. It shall be the duty of the filing officer to mark each
34 statement filed with a consecutive file number, and with
35 the date and hour of filing, and to keep such statement

36 in a separate file; and to note and index the filing in a
37 suitable index, indexed according to the name of the
38 trustee and containing a notation of the trustee's chief
39 place of business as given in the statement. The fee for
40 such filing shall be five dollars.

41 4. Presentation for filing of the statement described in
42 subsection one, and payment of the filing fee, shall consti-
43 tute filing under this article, in favor of the entruster, as
44 to any documents or goods falling within the description
45 in the statement which are within one year from the date
46 of such filing, or have been, within thirty days previous
47 to such filing, the subject matter of a trust receipt trans-
48 action between the entruster and the trustee.

49 5. At any time before expiration of the validity of the
50 filing, as specified in subsection four, a like statement, or
51 an affidavit by the entruster alone, setting out the infor-
52 mation required by subsection one, may be filed in like
53 manner as the original filing. Any filing of such further
54 statement or affidavit shall be valid in like manner and
55 for like period as an original filing, and shall also con-
56 tinue the rank of the entruster's existing security interest
57 as against all junior interests. It shall be the duty of the
58 filing officer to mark, file and index the further statement
59 or affidavit in like manner as the original.

Sec. 14. Limitations on Extent of Obligation Secured.—

2 As against purchasers and creditors, the entruster's se-
3 curity interest may extend to any obligation for which
4 the goods, documents or instruments were security before
5 the trust receipt transaction, and to any new value given
6 or agreed to be given as a part of such transactions; but
7 not, otherwise, to secure past indebtedness of the trustee;
8 nor shall the obligation secured under any trust receipt
9 transaction extend to obligations of the trustee to be sub-
10 sequently created.

Sec. 15. Act Not Applicable to Certain Transactions.—

2 This article shall not apply to single transactions of legal
3 or equitable pledge, not constituting a course of business,
4 whether such transactions be unaccompanied by delivery
5 of possession, or involve constructive delivery, or delivery

6 and redelivery, actual or constructive, so far as such trans-
7 actions involve only an entruster who is an individual
8 natural person, and a trustee entrusted as a fiduciary
9 with handling investments or finances of the entruster;
10 nor shall it apply to transactions of bailment or consign-
11 ment in which the title of the bailor or consignor is not
12 retained to secure an indebtedness to him of the bailee
13 or consignee.

Sec. 16. *Election among Filing Statutes.*—As to any
2 transaction falling within the provisions both of this arti-
3 cle and of any other act requiring filing or recording, the
4 entruster shall not be required to comply with both, but
5 by complying with the provisions of either at his election
6 may have the protection given by the act complied with;
7 except that buyers in the ordinary course of trade as
8 described in subsection two of section nine, and lienors
9 as described in section eleven, shall be protected as there-
10 in provided, although the compliance of the entruster be
11 with the filing or recording requirements of another act.

Sec. 17. *Cases Not Provided for.*—In any case not pro-
2 vided for in this article the rules of law and equity, in-
3 cluding the law merchant, shall continue to apply to
4 trust receipt transactions and purported pledge trans-
5 actions not accompanied by delivery of possession.

Sec. 18. *Uniformity of Interpretation.*—This article shall
2 be so interpreted and construed as to effectuate its gen-
3 eral purpose to make uniform the law of the states which
4 enact it.

Sec. 19. *Constitutionality.*—If any provision of this
2 article or the application thereof to any person or circum-
3 stances is held invalid, such invalidity shall not affect
4 other provisions or applications of the article which can
5 be given effect without the invalid provision or applica-
6 tion, and to this end the provisions of this article are de-
7 clared to be severable.

Sec. 20. *Short Title.*—This article may be cited as the
2 "Uniform Trust Receipts Act."

CHAPTER 77

(House Bill No. 298—By Mr. Wells and Mr. Amick)

[Passed March 6, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contracts and deeds invalid as to creditors and purchasers until recorded.

Article 1. Acts Generally Void as to Creditors and Purchasers.

Section

9. Contracts and deeds invalid as to creditors and purchasers until recorded.

Be it enacted by the Legislature of West Virginia:

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

- Section 9. *Contracts and Deeds Invalid as to Creditors and Purchasers until Recorded.*—Every such contract, every deed conveying any such estate or term, and every deed of gift, or trust deed or mortgage, conveying real estate or goods and chattels, shall be void as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, trust deed or mortgage may be: *Provided, however,* That the provisions of this section shall not apply to liens and encumbrances which are the subject of chapter seventeen-a, article four-a, relating to liens and encumbrances on vehicles.

CHAPTER 78

(House Bill No. 300—By Mr. Wells and Mr. Amick)

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter forty of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to conditional sales void as to certain persons.

Article 3. Conditional Sales.

Section

5. Conditional sales void as to certain persons.

Be it enacted by the Legislature of West Virginia:

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

Section 5. Conditional Sales Void as to Certain Persons.

2 —Every provision in a conditional sale contract reserving
3 an interest in the seller shall be void as to any purchaser
4 from or creditor of the buyer, who, without notice of such
5 provision, purchases the goods or acquires by attachment
6 or levy or otherwise a lien upon them, before the contract
7 or a copy thereof shall be filed as hereinafter provided,
8 unless such contract or copy is so filed within ten days
9 after the making of the conditional sale: *Provided, how-*
10 *ever,* That the provisions of this section shall not apply
11 to liens and encumbrances which are the subject of chap-
12 ter seventeen-a, article four-a, relating to liens and en-
13 cumbrances on vehicles.

CHAPTER 79

(House Bill No. 421—By Mr. Speaker, Mr. Singleton)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to blasting in coal mines.

Article 2. Coal Mines.

Section

33. Preparation of shots; blasting practices.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, 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:

Section 33. Preparation of Shots; Blasting Practices.—

2 Only competent and experienced persons designated by
3 mine management shall be permitted to handle explosives
4 and to do blasting. Only electric detonators of proper
5 strength fired with permissible shot firing units shall be
6 used except under special permits as hereinafter provided,
7 and drillholes shall be stemmed with at least twenty-four
8 inches of incombustible material, or at least one half of
9 the length of the hole shall be stemmed if the hole is less
10 than four feet in depth unless other permissible stemming
11 devices or methods are used. Drillholes shall not be drilled
12 beyond the limits of the cut, and as far as practicable
13 cuttings and dust shall be cleaned from the holes before
14 the charge is inserted. Charges of explosives exceeding
15 one and one-half pounds, but not exceeding three pounds,
16 shall be used only if drillholes are six feet or more in
17 depth. Ample warning shall be given before shots are
18 fired, and care shall be taken to determine that all persons
19 are in the clear before firing. Men shall be removed from
20 adjoining places and other places when there is danger
21 of shots blowing through. No shots shall be fired in any
22 place known to liberate explosive gas until such place
23 has been properly examined by a competent person who
24 is designated by mine management for that purpose, and
25 no shots shall be fired in any place where gas is detected
26 with a permissible flame safety lamp until such gas has
27 been removed by means of ventilation. After firing any
28 shot, or shots, the person firing the same shall not return
29 to the working face until the smoke has been cleared
30 away and then he shall make a careful examination of the
31 working face before leaving the place, or before perform-
32 ing any other work in the place.

33 Multiple shooting in coal and/or rock is authorized only
34 under permit issued by the director of the department
35 of mines. Permission to shoot more than ten shots simul-
36 taneously may be granted by the director only after con-
37 sultation with interested persons, and such shooting will

38 be performed by special methods and under precautions
39 prescribed by said director. All multiple shooting in bot-
40 tom or roof rock shall be performed in intake air, except
41 by special permit from the director of the department of
42 mines after consultation with interested persons as here-
43 tofore provided. Multiple blasting of more than ten shots
44 performed under any permit granted by the director un-
45 der this section shall be done only on noncoal producing
46 shifts or idle days except as may be provided as a condi-
47 tion of the permit granted.

48 The use of regular or short-interval delay detonators
49 may be used for blasting purposes with written permis-
50 sion from the director of the department of mines. The
51 use of regular delay detonators shall not be used for blast-
52 ing coal, but may be used for grading above or below coal
53 seams and during shaft, slope, tunnel work and in faults
54 or wants. Where short-interval delay detonators are
55 permitted by said director to be used, the shot firing cir-
56 cuit must be tested with a blasting galvanometer before
57 firing, and the leg wires connected in series. No instan-
58 taneous, regular, or zero-delay detonators are to be fired
59 in conjunction with short-interval delay detonators. The
60 delay interval between dependent rows must not be less
61 than twenty-five milliseconds or more than one hundred
62 milliseconds and the entire series of any one round shall
63 not provide a delay of more than five hundred milli-
64 seconds between the first and last shot. The total number
65 of charged holes to be fired during any one round must not
66 exceed the limit permitted by said director. Misfires must
67 be tested with a blasting galvanometer before removing.

68 Electrical equipment shall not be operated in the face
69 areas and only work in connection with timbering and
70 general safety shall be performed while boreholes are
71 being charged. Shots shall be fired promptly after charg-
72 ing. Mudcaps (adobes) or any other unconfined shots
73 shall not be permitted in any coal mine. No solid shooting
74 shall be permitted without written permission of the de-
75 partment of mines.

76 Blasting cables shall be well insulated and shall be as
77 long as may be necessary to permit persons authorized
78 to fire shots to get in a safe place out of the line of fire.

79 The cable when new shall be at least one hundred twenty-
80 five feet in length and never less than one hundred feet.
81 Shooting cables shall be kept away from power wires and
82 all other sources of electric current, connected to the leg
83 wires by the person who fires the shot, staggered as to
84 length or well separated at the detonator leg wires, and
85 shunted at the battery until ready to connect to the
86 blasting unit.

CHAPTER 80

(Senate Bill No. 24—By Mr. McCourt and Mr. Carrigan)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, ten and eleven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the jurisdiction and control of the state department of mines over surface mining operations.

Article 2-a. Surface Mining.

Section

1. Legislative purpose; apportionment of responsibility.
3. Permit required; fees and use of proceeds.
10. Surfacing mining supervisor and inspectors; appointment and qualification; compensation and expenses.
11. Duties of surface mining supervisor and inspectors generally; eligibility for permanent appointment; tenure; interest in mining operation; oath and bond.

Be it enacted by the Legislature of West Virginia:

That sections one, three, ten and eleven, 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:

- Section 1. *Legislative Purpose; Apportionment of Responsibility.*—Since practices and procedures in the surface mining of coal may and commonly do cause soil erosion, stream pollution and the accumulation of stag-

5 nant waters, increase the likelihood of floods, destroy the
6 value of lands for agricultural purposes, counteract efforts
7 for the conservation of soil, water and other natural re-
8 sources of the state, the Legislature finds and declares that
9 the department of natural resources shall have jurisdic-
10 tion and control over land and soil aspects of surface min-
11 ing operations, and the restoration and reclamation of
12 lands surface mined and areas affected thereby, but that
13 surface mining as an industrial enterprise and occupation
14 shall be under the jurisdiction and control and subject to
15 the regulations of the state department of mines.

Sec. 3. *Permit Required; Fees and Use of Proceeds.*—

2 It shall hereafter be unlawful for any person, firm or
3 corporation to engage in the surface mining of coal with-
4 out having first obtained from the director of the depart-
5 ment of mines a permit therefor as provided in this sec-
6 tion. The following information must be stated in the
7 application for such a permit: (1) A description of the
8 location and area of the land to be covered by the permit
9 together with a map or plat of the portion to be surface
10 mined; (2) the owner or owners of the surface of the
11 land; (3) the owner or owners of the coal to be mined;
12 (4) the source of the operator's legal right to enter and
13 mine the coal on the land covered by the permit; (5) the
14 permanent and temporary postoffice addresses of the
15 operator; (6) whether any permits are now held, and if
16 so, how many such permits and the numbers thereof.

17 Upon payment to the department of mines of a registra-
18 tion fee of one hundred dollars and the certification from
19 the director of the department of natural resources that
20 a bond as required by section three, article six, chapter
21 twenty of the code has been posted, the director of the de-
22 partment of mines shall upon proper application, issue
23 the requested permit. The permit shall be for a period
24 of one year from the date of issuance and shall be ex-
25 tended upon written request and by the payment of fifty
26 dollars for each succeeding year. Permits issued prior to
27 the effective date of this article shall be renewable on the
28 anniversary date of their issuance.

29 The registration and renewal fees heretofore or here-
30 after collected as provided in this article shall be deposited

31 with the state treasurer to the credit of the general reve-
32 nue fund.

Sec. 10. *Surface Mining Supervisor and Inspectors; Appointment and Qualifications; Compensation and Expenses.*—Five surface mining inspectors and a state surface mining supervisor shall be appointed by the director of the department of mines. All such appointees shall be citizens of West Virginia, in good health, not less than thirty nor more than fifty-five years of age, of good character and reputation, and temperate in habits. Each of them shall have had at least five years' practical experience in strip and surface mining in West Virginia. The surface mining supervisor shall be paid not less than six thousand six hundred dollars and not more than seven thousand five hundred dollars per annum and the surface mining inspectors shall be paid not less than six thousand dollars and not more than six thousand four hundred dollars per annum. Each shall be allowed reasonable traveling expenses when itemized by the claimant who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties for the department of mines. Within the limits provided in this section, the salary of the supervisor and of each inspector shall be fixed by the director of the department of mines, and in fixing such salaries the director shall consider ability, performance of duty, responsibility and experience of each. All such salaries and expenses shall be paid from department of mines funds.

Sec. 11. *Duties of Surface Mining Supervisor and Inspectors Generally; Eligibility for Permanent Appointment; Tenure; Interest in Mining Operation; Oath and Bond.*—The surface mining supervisor and surface mining inspectors shall make such surveys and inspections of surface mining operations, shall effect practical and effective administration and enforcement of all mining laws of the state applicable to surface mining, and shall perform such other duties and services as may be prescribed by the director of the department of mines.

No person shall be eligible for permanent appointment as surface mining supervisor or surface mining inspector

13 until he has served in a probationary status, to the satis-
14 faction of the director of the department of mines, for a
15 period of one year, but the surface mining supervisor and
16 the surface mining inspectors serving as such on the effec-
17 tive date of this section shall receive permanent appoint-
18 ment after they shall have served in such capacity for a
19 period of one year to the satisfaction of the director. Any
20 person receiving permanent appointment as surface min-
21 ing supervisor or surface mining inspector shall have per-
22 manent tenure until he becomes sixty-five years of age,
23 subject to removal only for physical or mental impair-
24 ment, neglect of duty, drunkenness, malfeasance in office,
25 or official misconduct. No person serving as surface min-
26 ing inspector shall be interested, directly or indirectly, as
27 owner, operator, or stockholder of any coal mining opera-
28 tion in the state of West Virginia and the existence or
29 acquisition of such interest on the part of any such inspec-
30 tor shall immediately vacate his position.

31 Before any such supervisor or inspector shall enter upon
32 the discharge of his duties, he shall take and subscribe
33 to the public official's oath as prescribed by the constitu-
34 tion of West Virginia and shall execute a bond in the
35 penal sum of two thousand dollars, with surety approved
36 by the director of the department of mines, and condi-
37 tioned upon the faithful discharge of his duties. Prem-
38 iums on such bonds shall be paid from department of
39 mines funds, and all such executed bonds and oaths shall
40 be filed in the office of the secretary of state.

CHAPTER 81

(Senate Bill No. 35—By Mr. Nuckols)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven-a, relating to motor vehicle administration; definitions.

Article 1. Words and Phrases Defined.**Section****27-a. Resident.**

Be it enacted by the Legislature of West Virginia:

That article one, chapter seventeen-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 twenty-seven-a, to read as follows:

Section 27-a. *Resident.*—Every person who is a legal
2 resident of this state and every nonresident (owner, cor-
3 poration, manufacturer, dealer, used car dealer) owning,
4 maintaining or operating a place or places of business in
5 this state and using motor vehicles intrastate in connec-
6 tion with such business in this state, or any nonresident
7 who maintains temporary residence in this state and ac-
8 cepts any employment or engages in any trade, profession
9 or occupation in this state, or any nonresident who main-
10 tains temporary residence in this state in excess of thirty
11 days during the registration year.

CHAPTER 82

(Com. Sub. for House Bill No. 167—Originating in the
House Committee on Finance)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor and other vehicles and including among other things motor vehicle administration, registration, certificates of title and the fees and taxes imposed in connection therewith.

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.**Section****4. Application for certificate of title; tax.**

Be it enacted by the Legislature of West Virginia:

That section four, 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:

Section 4. *Application for Certificate of Title; Tax.*—

2 Certificates of registration of any vehicle or registration
3 plates therefor, whether original issues or duplicates, shall
4 not be issued or furnished by the department of motor
5 vehicles or any other officer charged with such duty, un-
6 less the applicant therefor already has received, or shall
7 at the same time make application for and be granted,
8 an official certificate of title of such vehicle. Such appli-
9 cation shall be upon a blank form to be furnished by the
10 department of motor vehicles and shall contain a full
11 description of the vehicle, which description shall contain
12 the manufacturer's serial or identification number or
13 other number as determined by the commissioner and any
14 distinguishing marks, together with a statement of the
15 applicant's title and of any liens or encumbrances upon
16 such vehicle, the names and addresses of the holders of
17 such liens and such other information as the department
18 of motor vehicles may require. The application shall be
19 signed and sworn to by the applicant. A tax is hereby
20 imposed upon the privilege of effecting the certification
21 of title of each vehicle in the amount equal to three per
22 cent of the value of said motor vehicle at the time of such
23 certification. If the vehicle is new, the actual purchase
24 price or consideration to the purchaser thereof shall be
25 the value of said vehicle; if the vehicle is a used or
26 second-hand vehicle, the present market value at time of
27 transfer or purchase shall be deemed the value thereof
28 for the purpose of this section: *Provided, however,* That
29 if said motor vehicle is purchased in the state of West
30 Virginia, so much of the purchase price or consideration
31 as is represented by the exchange of other vehicles on
32 which the tax herein imposed has been paid by the pur-
33 chaser shall be deducted from the total actual price or
34 consideration paid for said vehicle, whether the same be
35 new or second-hand; if the vehicle be acquired through
36 gift, or by any manner whatsoever, unless specifically
37 exempted in this section, the present market value of the

38 vehicle at the time of the gift or transfer shall be deemed
39 the value thereof for purposes of this section. No certifi-
40 cate of title for any vehicle shall be issued to any appli-
41 cant unless such applicant shall have paid to the depart-
42 ment of motor vehicles the tax imposed by this section
43 which shall be three per cent of the true and actual value
44 of said vehicle whether the vehicle be acquired through
45 purchase, by gift, or by any other manner whatsoever
46 except gifts between husband and wife or between par-
47 ents and children; but the tax imposed by this section
48 shall not apply to vehicles to be registered as Class H
49 or Class I vehicles, as defined in section one, article ten
50 of this chapter, which are used or to be used in interstate
51 commerce, nor shall the tax imposed by this section apply
52 to titling of vehicles by a registered dealer of this state
53 for resale only, nor shall the tax imposed by this section
54 apply to titling of vehicles by this state or any political
55 subdivision thereof, or by any volunteer fire department
56 organized and incorporated under the laws of the state of
57 West Virginia for protection of life or property. The total
58 amount of revenue collected by reason of this tax shall
59 be paid into the state road fund and expended by the
60 state road commissioner for matching federal aid funds
61 allocated for West Virginia. In addition to said tax, there
62 shall be a charge of one dollar for each original certificate
63 of title so issued: *Provided*, That this state or any political
64 subdivision thereof, or any such volunteer fire depart-
65 ment, shall be exempted from payment of such charge.

66 Notwithstanding the provisions of this section, the own-
67 ers of trailers, semitrailers and other vehicles not sub-
68 ject to the certificate of title tax prior to enactment of
69 this chapter shall not be required to pay the above-men-
70 tioned tax upon making application for a certificate of
71 title for such vehicle, but shall be required to pay a fee
72 of one dollar for the issuance of each such certificate of
73 title.

74 Such certificate shall be good for the life of the vehicle,
75 so long as the same is owned or held by the original
76 holder of such certificate, and need not be renewed an-
77 nually, or any other time, except as herein provided.

78 If, by will or direct inheritance, a person becomes the
79 owner of a motor vehicle upon which the tax herein im-

80 posed has been paid, he shall not be required to pay such
81 tax.

82 A person who has paid the tax imposed by this section
83 shall not be required to pay the tax a second time for
84 the same motor vehicle, but he shall be required to pay a
85 charge of one dollar for the certificate of retitling of that
86 motor vehicle, except that such tax shall be paid by such
87 person when the title to such vehicle has been transferred
88 either in this or another state from such person to an-
89 other person and transferred back to such person.

CHAPTER 83

(House Bill No. 480—By Mr. Watson)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact an act of the Legislature, regular session, one thousand nine hundred sixty-one, known and designated as House Bill No. 95, which bill amended and reenacted section one, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of the transfer of title to, or interest in, registered motor vehicles upon the registration of, and registration plates for, such motor vehicles.

Article 4. Transfers of Title or Interest.

Section

1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

Be it enacted by the Legislature of West Virginia:

That an act of the Legislature, regular session, one thousand nine hundred sixty-one, known and designated as House Bill No. 95, which bill amended and reenacted section one, article four, 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:

Section 1. *Registration Expires on Transfer by Owner; Transfer, Surrender or Retention of Plates.*—Whenever the owner of a registered vehicle transfers or assigns his title, or interest thereto, the registration of such vehicle shall expire: *Provided, however,* That such owner, if he has made application to the department to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of fifteen days, but in no event longer than fifteen days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of one dollar, issue a new certificate showing the use to be made of such plates. Such plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the department the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner shall immediately send to the department the transfer fee of one dollar with any additional fee that may be required under the terms of this chapter. The owner's copy, properly signed by the dealer, will be the owner's identification until he receives a new registration card from the department.

The owner of a set of registration plates may surrender them to the commissioner together with the registration card and, upon the payment of one dollar as an exchange

42 fee and upon the payment of such additional fees as are
43 necessary to equalize the value of the plates surrendered
44 with the value of the registration plates desired, receive
45 in exchange a set of plates and registration card for a
46 vehicle of a different class.

CHAPTER 84

(House Bill No. 32—By Mr. Wells)

[Passed February 28, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to the showing of liens and encumbrances on the certificate of title to vehicles by the department of motor vehicles; notice of the existence of lien; voluntary liens created by owner not endorsed on title void as to subsequent purchasers for value without notice and lien creditors; no cause of action against the lienor created; certain common law and statutory liens not affected; vehicle accessories not affected; effect of article on liens and encumbrances created in transactions consummated before vehicle brought into state and subject to registration and titling in state; and providing such liens or encumbrances to be void after five years unless refiled.

Article 4-a. Liens and Encumbrances on Vehicles to Be Shown on Certificate of Title; Notice to Creditors and Purchasers.

Section

1. Certificate to show liens or encumbrances.
2. Liens and encumbrances subsequently created.
3. Certificate as notice of lien; lien created by voluntary act of the owner not shown on certificate of title void as to subsequent purchasers and lien creditors; exception as to deferred purchase money liens; existing liens excepted.
4. Deferred purchase money lien or encumbrance may be filed within ten days after purchase.
5. Priority of liens shown on certificate.
6. Who to hold certificate of title subject to lien; transfer of possession upon satisfaction of lien; assignment of obligation by lien holder.

7. Release of lien or encumbrance shown on certificate of title.
8. Surrender of certificate required when lien paid.
9. Levy of execution, etc.
10. Fee for recording and release of lien.
11. Article to create no cause of action against lienor for damage to property or injury to person.
12. Article not to apply to certain common law and statutory liens.
13. Article not to apply to vehicle accessories.
14. Effect of article on liens and encumbrances created in transactions consummated before vehicle brought into state and subject to registration and titling in state.
15. Liens or encumbrances void after five years unless refiled; refiling for additional two-year periods; deletion from lien index.

Be it enacted by the Legislature of West Virginia:

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

Section 1. Certificate to Show Liens or Encumbrances.

- 2 —The department upon receiving an application for a cer-
3 tificate of title to a vehicle, trailer, semitrailer or pole
4 trailer, for which a certificate of title is required under
5 article three of this chapter, all of which are hereinafter
6 in this article referred to as vehicles, showing liens or
7 encumbrances upon such vehicle, shall, upon issuing to
8 the owner thereof a certificate of title therefor, show upon
9 the face of the certificate of title all liens or encumbrances
10 disclosed by such application. All such liens or encum-
11 brances shall be shown in the order of their priority being
12 according to the information contained in such applica-
13 tion. When such an application shows liens and encum-
14 brances, such information and evidence of the lien in con-
15 nection therewith as the department may deem necessary
16 shall also be furnished. Such information shall include
17 the name and address of the lien holder, the nature and
18 kind of his lien, the date thereof, and the amount thereby
19 secured, all of which information, upon recordation, shall
20 be endorsed upon the title certificate. Upon issuing the
21 certificate, the department shall thereupon send or deliver
22 it to the holder of the first lien.

Sec. 2. Liens and Encumbrances Subsequently Created.

- 2 —Liens or encumbrances placed on vehicles by the volun-
3 tary act of the owner (including a registered dealer hold-

4 ing title by assignment entered upon a certificate of title)
5 after the original issue of title to be properly recorded
6 must be shown on the certificate of title. In such cases,
7 the owner or lien holder shall file application with the
8 department on a blank furnished for that purpose, setting
9 forth the lien or liens and such information and evidence
10 of the lien in connection therewith as the department may
11 deem necessary. Such information shall include the name
12 and address of the lien holder, the nature and kind of his
13 lien, the date thereof, and the amount thereby secured,
14 all of which information, upon recordation, shall be en-
15 dorsed upon the title certificate with the endorsement of
16 the fact of such lien as hereinafter provided. The depart-
17 ment, if satisfied that it is proper that the same be re-
18 corded, and upon surrender of the certificate of title cov-
19 ering the vehicle, shall thereupon issue a new certificate
20 of title, showing the liens or encumbrances in the order
21 of their filing being according to the date, hour and min-
22 ute of receipt by the department of the application for
23 same. For the purpose of recording a subsequent lien on
24 a certificate of title, the subsequent lienor shall make a
25 written request upon the lienor in possession of the cer-
26 tificate of title, accompanied by proof of the existence of
27 his subsequent lien, stating his need to have possession
28 of the certificate of title for the purpose of having his
29 lien recorded thereon by the department of motor ve-
30 hicles. Thereupon, the lienor in possession of the certifi-
31 cate shall within a reasonable time, not to exceed ten
32 days from the receipt of said written request, deliver the
33 certificate of title to the requesting subsequent lienor.

34 Upon delivery of the certificate of title, the subsequent
35 lienor shall immediately forward it and his own applica-
36 tion to the department of motor vehicles for filing his
37 lien and recording the same on the certificate of title.
38 Upon issuing the new certificate, the department shall
39 thereupon send or deliver it to the holder of the first lien.

2 *Sec. 3. Certificate as Notice of Lien; Lien Created by*
3 *Voluntary Act of the Owner Not Shown on Certificate of*
4 *Title Void as to Subsequent Purchasers and Lien Cred-*
5 *itors; Exception as to Deferred Purchase Money Liens;*
6 *Existing Liens Excepted. — Such certificate of title,*

6 when issued by the department showing a lien or en-
7 cumbrance, shall be deemed from and after the filing
8 with the department of the application therefor ade-
9 quate notice to the state, and its agencies, boards and
10 commissions and the United States government and its
11 agencies, boards and commissions, creditors and pur-
12 chasers that a lien against the vehicle exists and the
13 recording of such reservation of title, lien or encum-
14 brance in the county wherein the purchaser or debtor
15 resides or elsewhere is not necessary and shall not be
16 required or have any effect. The provisions of any other
17 article, chapter or section of this code to the contrary not-
18 withstanding, any lien or encumbrance placed upon a
19 vehicle by the voluntary act of the owner (including a
20 registered dealer holding title thereto by assignment en-
21 tered upon a certificate of title) but not shown on such
22 certificate of title shall be void as to any purchaser for
23 value or lien creditor, who, in either case, without notice
24 of such lien or encumbrance, purchases such vehicle or
25 acquires by attachment, levy or otherwise a lien there-
26 upon: *Provided, however,* That a purchase money lien or
27 encumbrance may be filed as hereinafter set forth in sec-
28 tion four of this article with the effect therein stated:
29 *Provided further,* That this section shall apply only to
30 liens and encumbrances created on and after the effective
31 date of this article.

Sec. 4. *Deferred Purchase Money Lien or Encumbrance*
2 *May Be Filed within Ten Days after Purchase.*—If appli-
3 cation for a certificate of title showing a deferred pur-
4 chase money lien or deferred purchase money encum-
5 brance to be placed upon a vehicle be filed in the office of
6 the department within ten days from the date of such ap-
7 plicant's purchase of such vehicle, it shall be as valid as to
8 all persons, whomsoever, including the state, as if such
9 filing had been done on the day such lien or encum-
10 brance was acquired.

Sec. 5. *Priority of Liens Shown on Certificate.*—The
2 liens shown upon such certificate of title issued by the
3 department pursuant to applications for same shall have
4 priority over any other liens against such vehicle, how-

5 ever created and recorded, except as hereinafter pro-
6 vided in this article.

Sec. 6. *Who to Hold Certificate of Title Subject to Lien; Transfer of Possession upon Satisfaction of Lien; Assignment of Obligation by Lien Holder.*—The certificate of title of such vehicle shall be delivered to the person, firm or corporation holding the first lien or encumbrance upon the vehicle and retained by him or them until the entire amount of his or their lien is fully paid. Thereupon the certificate of title shall be delivered to the next lien holder, and so on, or if none, then to the owner of the vehicle. It shall be the responsibility of each lienor upon the satisfaction of his lien to deliver said certificate of title to the lienor next entitled to the possession thereof and, if none to the owner, which acts of delivery may be accomplished through registered or certified mail addressed to the lienor or the owner entitled to such possession at his address as shown upon said certificate. In the event of assignment of the obligation by a lien holder who lawfully has possession of the certificate of title at the time of assignment, the lien holder shall deliver the certificate of title to his assignee who shall be entitled to hold the same until the obligation is satisfied, at which time the assignee shall deliver the certificate of title to the next lien holder, or if none, then to the owner of the vehicle. In the event of assignment of the obligation by a lien holder not entitled to possession of the certificate of title at the time of assignment, the lien holder shall immediately upon becoming lawfully entitled to, and obtaining lawful possession of, the certificate of title, deliver the same to his assignee who shall be entitled to hold the same until the obligation is satisfied, at which time the assignee shall deliver the certificate of title to the next lien holder, or if none, then to the owner of the vehicle.

Sec. 7. *Release of Lien or Encumbrance Shown on Certificate of Title.*—An owner upon securing the release of any lien or encumbrance upon a vehicle shown upon the certificate of title issued therefor may exhibit the document evidencing such release, signed by the person or persons making such release and acknowledged before a

7 notary public or someone authorized by the laws of this
8 state to take acknowledgments of deeds, and this docu-
9 ment together with the certificate of title shall be returned
10 to the department; or the lien holder may release the
11 lien by endorsing across the lien in his favor on the face
12 of the title or closely adjacent thereto the following words
13 or words of similar effect or purport: "This lien, this day
14 fully paid, satisfied and released, this.....day of.....,"
15 and duly signing and executing said endorsement and
16 acknowledging the same before a notary public and hav-
17 ing said notary public execute a certificate of such ac-
18 knowledgment in the form required for releasing deeds of
19 trust in this state; or when it is impossible to secure either
20 such release from the beneficiary or holder of the lien, the
21 owner may exhibit to the department whatever evidence
22 may be available showing that the debt secured has been
23 satisfied, together with a statement by the owner under
24 oath that the debt has been paid and the certificate of title
25 to such vehicle. The department when satisfied as to the
26 genuineness and regularity thereof shall issue to the
27 owner either a new certificate of title in proper form or
28 an endorsement or rider showing the release of the lien
29 or encumbrance which the department shall attach to the
30 outstanding certificate of title.

Sec. 8. *Surrender of Certificate Required When Lien*
2 *Paid.*—It shall be unlawful and constitute a misdemeanor
3 for a lienor who holds a certificate of title as provided in
4 this article to refuse or fail to execute a release as pro-
5 vided for in the next preceding section, or to refuse or
6 fail to surrender such certificate of title to the person
7 legally entitled thereto within fifteen days after his lien
8 shall have been paid and satisfied.

Sec. 9. *Levy of Execution, Etc.*—A levy made by virtue
2 of an execution, fieri facias or other proper court order,
3 upon a vehicle for which application for a certificate of
4 title has been filed with the department, shall constitute a
5 recorded lien, with the effect of constructive notice there-
6 of to all persons, subsequent to holders of liens or encum-
7 brances theretofore filed with the department, only from
8 and after the time when the officer making such levy files
9 a report to and with the department of motor vehicles, on

10 forms provided therefor by the department, that such levy
11 has been made or that the vehicle thus levied upon has
12 been seized by and is in the custody of such officer; and the
13 provisions of any other article, chapter or section of this
14 code to the contrary notwithstanding, the docketing or
15 recording of any such execution, fieri facias or other
16 court order in the office of the clerk of the county court of
17 any county in this state shall not constitute constructive
18 notice thereof as to any such vehicle.

19 Such report by such officer shall show among other
20 things the full names of the parties to the proceeding
21 upon which the execution, fieri facias or court order is
22 based; the identity of the court, judge or justice of the
23 peace or other judicial officer from which said execu-
24 tion, fieri facias or other court order was issued; the
25 amount required for the satisfaction thereof; the date
26 thereof; the date and hour when received by the officer;
27 the date, hour and minute of levy, seizure, attachment
28 or other execution of said process; the date returnable;
29 the make, year, body style of the vehicle to which the
30 lien of said execution, fieri facias or court order relates
31 as well as the name of the person or persons whose in-
32 terest or ownership therein is intended to be affected by
33 the lien of such execution, fieri facias or court order.
34 Such report shall also show, if known, the serial num-
35 ber of such vehicle, the current West Virginia registra-
36 tion card number and current West Virginia registered
37 owner thereof and current West Virginia license plate
38 number, and if any item in this sentence enumerated for
39 listing on such report is unknown to the reporting officer
40 the report shall state that such item is unknown to the
41 officer. Such report shall be dated, signed and certified
42 by the reporting officer and such certification shall con-
43 stitute an official act on his part. The department shall
44 by endorsement upon or attachment to its records note
45 the officer's report and the day and hour and the minute
46 received upon its record copy of the certificate of title
47 thereby affected; should such lien be thereafter satisfied
48 or should the vehicle thus levied upon and seized be
49 thereafter released by such officer, he shall immediately
50 report that fact to the department of motor vehicles and

51 the department shall in a like manner note such fact.
52 Any owner who after such levy or seizure by an officer
53 and before the report thereof by the officer to the de-
54 partment shall fraudulently assign or transfer his title
55 to or interest in such vehicle or cause the certificate of
56 title thereto to be assigned or transferred or cause a
57 lien or encumbrance to be shown upon such certificate
58 of title shall be deemed guilty of a misdemeanor and
59 upon conviction thereof shall be fined not less than
60 twenty-five nor more than five hundred dollars, or im-
61 prisoned in jail for not less than ten days nor more than
62 twelve months.

63 The actual possession of the levying or attaching officer
64 of the law or the actual possession of some person, other
65 than the judgment or attachment debtor, holding such
66 property for the officer, shall constitute notice of the
67 lien, if any, of the execution, fieri facias, or other court
68 order under which he levies, seizes or otherwise takes
69 possession.

70 For any vehicle as to which an involuntary lien has
71 been reported and noted by the department and for which
72 there has been no report of release or satisfaction by the
73 levying or seizing officer, if application be made for the
74 transfer of title thereto or issuance of new certificate of
75 title therefor to the current registered owner or to some-
76 one claiming by assignment of title certificate from such
77 registered owner or if application be made pursuant to
78 the provisions of this article for the endorsement upon
79 the certificate of title to such vehicle of a lien or encum-
80 brance created by the voluntary act of the owner and
81 the issuance of a new certificate of title showing the
82 same, such involuntary lien, for which the department's
83 records show no report of satisfaction or release, and the
84 information furnished in the officer's report thereof to-
85 gether with the date, hour and minute of receipt of such
86 report shall be endorsed upon such new certificate of
87 title issued pursuant to any of such applications.

Sec. 10. *Fee for Recording and Release of Lien.*—The
2 department of motor vehicles is hereby authorized to
3 charge a fee of two dollars for the recording of any lien
4 created by voluntary act of the owner and endorsing it

5 upon such title certificate issued pursuant to this article,
6 and the department of motor vehicles is hereby authorized
7 to charge a fee of fifty cents for recordation of any release
8 of a lien created by the voluntary act of the owner: *Pro-*
9 *vided, however,* That no charge shall be made for the
10 endorsement and recordation of liens or releases thereof
11 as provided under section nine of this article.

Sec. 11. *Article to Create No Cause of Action against*
2 *Lienor for Damage to Property or Injury to Person.—*
3 The exercise by the lienor of the rights and privileges in
4 this article given him shall not in and of itself give rise
5 to a cause of action against such lienor for damages
6 resulting from any act or omission of the registered and
7 beneficial owner of the vehicle in said registered owner's
8 dominion, ownership, use, operation or control thereof.

Sec. 12. *Article Not to Apply to Certain Common Law*
2 *and Statutory Liens.—*The provisions of this article shall
3 not be construed so as to require common law mechanic's
4 liens or repairman's liens, or the lien of an improver
5 or bailee as provided in article eleven, chapter thirty-
6 eight of the code of West Virginia, one thousand nine
7 hundred thirty-one, as amended, to be shown on the
8 certificate of title in order to preserve such liens against
9 any purchaser for value or lien creditor who, in either
10 case, without notice of such lien or encumbrance, pur-
11 chases such vehicle or acquires by attachment, levy or
12 otherwise a lien thereupon.

Sec. 13. *Article Not to Apply to Vehicle Accessories.—*
2 The provisions of this article shall not apply to the re-
3 cording of a lien or liens which are created only upon
4 tires, radios, heaters, or other vehicle accessories.

Sec. 14. *Effect of Article on Liens and Encumbrances*
2 *Created in Transactions Consummated before Vehicle*
3 *Brought into State and Subject to Registration and Titling*
4 *in State.—*As to bona fide purchasers for value or lien
5 creditors without notice, the provisions of this article
6 shall not be construed so as to invalidate or render void
7 any lien or encumbrance placed upon a vehicle, by the
8 voluntary act of the owner, in a transaction consummated
9 before the vehicle is brought into this state, and before the

10 same is subject to registration in the state of West Vir-
11 ginia, and before the application for a West Virginia
12 certificate of title is required so long as such a lien or en-
13 cumbrance has been properly recorded according to the
14 laws of the jurisdiction in which it was created so as
15 to be valid against bona fide purchasers for value or lien
16 creditors without notice and so long as such lien or en-
17 cumbrance is of such kind, nature and character as the
18 law of this state would otherwise protect against such
19 purchasers and lien creditors: *Provided, however, That*
20 *after such vehicle is brought into this state and after it is*
21 *required to be registered and titled in this state, such*
22 *lien or encumbrance as in this section described shall be*
23 *void as to any purchaser for value or lien creditor, who,*
24 *in either case, without notice of such lien or encum-*
25 *brances, purchases such vehicle or acquires by attach-*
26 *ment, levy or otherwise a lien thereupon, unless such*
27 *lien holder, within three months after the removal of such*
28 *vehicle into this state or within ten days after such lien*
29 *holder received notice of such removal, which ever period*
30 *of time is least, shall, in the manner set forth in section*
31 *two of this article file application with the department in*
32 *which case the department shall proceed as in section two*
33 *of this article.*

Sec. 15. *Liens or Encumbrances Void after Five Years*
2 *unless Refiled; Refiling for Additional Two-year Periods;*
3 *Deletion from Lien Index.*—The filing of any lien or en-
4 cumbrance and its recordation upon the face of a certifi-
5 cate of title to any vehicle as provided in this article shall
6 be void for a period of five years only from the date of
7 such filing, unless the lien or encumbrance is refiled in the
8 manner provided in this article for filing and recordation
9 in the first instance, in which event the lien or encum-
10 brance shall be valid for successive additional periods of
11 two years from the date of each such refileing.

12 When the last lien or encumbrance shown on a certi-
13 ficate of title becomes invalid by the passage of time as
14 provided in this section, the commissioner of motor ve-
15 hicles shall not be required to maintain a lien index as
16 to such certificate of title.

CHAPTER 85

(Senate Bill No. 32—By Mr. Nuckols)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permits to non-resident owners.

Article 5. Permits to Nonresident Owners.

Section

1. Nonresident owners exempt from registration.

Be it enacted by the Legislature of West Virginia:

That section one, article five, 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:

Section 1. *Nonresident Owners Exempt from Registration.*—A nonresident owner, except as otherwise provided in this section, owning any vehicle registered in a foreign state or country of a type otherwise subject to registration hereunder may operate or permit the operation of such vehicle within this state for a period of thirty days without registering such vehicle in, or paying any fees to, this state subject to the condition that such vehicle at all times when operated in this state is duly registered in and displays upon it a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner.

Every nonresident, including any foreign corporation, carrying on business within this state and owning and regularly operating in such business any motor vehicle, trailer, or semitrailer within this state, shall be required to register each such vehicle and pay the same fee therefor as is required with reference to like vehicles owned by residents of this state, except as otherwise provided by reciprocal agreements with other states accomplished pursuant to section ten, article two of this chapter.

CHAPTER 86

(House Bill No. 355—By Mr. Watson)

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration fees for vehicles equipped with pneumatic tires.

Article 10. Registration, License and other Fees.

Section

3. Registration fees for vehicles equipped with pneumatic tires.

Be it enacted by the Legislature of West Virginia:

That section three, 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:

Section 3. *Registration Fees for Vehicles Equipped with*

2 *Pneumatic Tires.*—The following registration fees for the
3 classes indicated shall be paid annually to the department
4 for the registration of vehicles subject to registration
5 hereunder when equipped with pneumatic tires:

6 Class A. The registration fee for all motor vehicles of
7 this class shall be as follows:

8 (1) For motor vehicles of a weight of three thousand
9 pounds or less—twenty dollars.

10 (2) For motor vehicles of a weight of three thousand
11 and one pounds to four thousand pounds—twenty-four
12 dollars.

13 (3) For motor vehicles of a weight in excess of four
14 thousand pounds—thirty dollars.

15 For the purpose of determining the weight the actual
16 weight of the vehicle shall be taken: *Provided*, That for
17 vehicles owned by churches, or by trustees for churches,
18 which vehicles are regularly used for transporting parish-

19 ioners to and from church services, no license fee shall
20 be charged, but notwithstanding such exemption, the cer-
21 tificate of registration and license plates shall be obtained
22 the same as other cards and plates under this article.

23 Class B, Class I and Class K. The registration fee for
24 all motor vehicles of these three classes shall be as follows:

25 (1) For declared gross weights of four thousand pounds
26 or less—twenty dollars.

27 (2) For declared gross weights of four thousand and
28 one pounds to eight thousand pounds—twenty-two dol-
29 lars and fifty cents.

30 (3) For declared gross weights of eight thousand and
31 one pounds to sixteen thousand pounds—twenty-two dol-
32 lars and fifty cents plus forty-five cents for each hundred
33 pounds or fraction thereof that gross weight of such
34 vehicle or combination of vehicles exceeds eight thousand
35 pounds.

36 (4) For declared gross weights greater than sixteen
37 thousand pounds—sixty-eight dollars and fifty cents plus
38 ninety cents for each one hundred pounds or fraction
39 thereof that the gross weight of such vehicle or combina-
40 tion of vehicles exceeds sixteen thousand pounds.

41 If the declared gross weight of a Class B, Class I or
42 Class K motor vehicle includes the gross weight of a
43 Class C or Class L vehicle used in combination with such
44 Class B, Class I or Class K motor vehicle and the registra-
45 tion fee prescribed hereunder for such Class C or Class
46 L vehicle has been paid, there shall be deducted from the
47 registration fee for such Class B, Class I or Class K motor
48 vehicle the amount of seventeen dollars and fifty cents.

49 Class C and Class L. The registration fee for all ve-
50 hicles of these two classes shall be seventeen dollars and
51 fifty cents.

52 Class G. The registration fee for each motorcycle hav-
53 ing two wheels shall be six dollars. The registration fee
54 for each motorcycle having three wheels shall be seven
55 dollars and fifty cents.

56 Class H. The registration fee for all vehicles for this
57 class operating entirely within the state shall be five dol-
58 lars; and for vehicles engaged in interstate transportation
59 of persons, the registration fee shall be the fees provided

60 by this section for Class B, Class I and Class K reduced by
61 the amount that the mileage of such vehicles operated in
62 states other than West Virginia bears to the total mileage
63 operated by such vehicles in all states under a formula to
64 be established by the department of motor vehicles.

65 Class J. The registration fee for all motor vehicles of
66 this class shall be eighty-five dollars. Ambulances and
67 hearses used exclusively as such shall be exempted from
68 the above special fees.

69 Class R. The registration fee for all vehicles of this
70 class shall be ten dollars.

71 Class S. The registration fee for all vehicles of this
72 class shall be seventeen dollars and fifty cents.

73 Class T. The registration fee for all vehicles of this
74 class shall be six dollars.

75 Class U. The registration fee for all motor vehicles of
76 this class shall be fifty-seven dollars and fifty cents.

77 Class Farm Truck. The registration fee for all motor
78 vehicles of this class shall be as follows:

79 (1) For farm trucks of declared gross weights of eight
80 thousand and one pounds to sixteen thousand pounds—
81 thirty dollars.

82 (2) For farm trucks of declared gross weights of sixteen
83 thousand and one pounds to twenty-two thousand pounds
84 —eighty dollars.

85 From the revenue provided by this section for the fiscal
86 year one thousand nine hundred fifty-nine—one thousand
87 nine hundred sixty the sum of three million two hundred
88 thousand dollars shall be used for the purpose of matching
89 federal funds allocated for the interstate road system in
90 West Virginia.

— c —

CHAPTER 87

(House Bill No. 98—By Mr. Watson)

[Passed February 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance

of permits and licenses, and expiration and renewal thereof.

Article 2. Issuance of License, Expiration and Renewal.**Section**

11. Duplicate permits and licenses.

Be it enacted by the Legislature of West Virginia:

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

Section 11. *Duplicate Permits and Licenses.*—In the
2 event that an instruction permit, operator's license or
3 chauffeur's license issued under the provisions of this
4 chapter is lost or destroyed, the person to whom such
5 permit or license was issued may upon making proper
6 application and upon payment of a fee of one dollar,
7 obtain a duplicate thereof upon furnishing proof satis-
8 factory to the department that such permit or license
9 has been lost or destroyed.

CHAPTER 88

(Senate Bill No. 12—By Mr. Jackson)

[Passed March 4, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to speed limitations on vehicles.

Article 6. Speed Restrictions.**Section**

4. Special speed limitations on vehicles not designed for carrying passengers and equipment with pneumatic tires.

Be it enacted by the Legislature of West Virginia:

That section four, article six, 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:

- Section 4. *Special Speed Limitations on Vehicles Not Designed for Carrying Passengers and Equipment with Pneumatic Tires.***—Subject to all other speed restrictions of this chapter no person shall drive a vehicle not designed for carrying passengers and equipped with pneumatic tires at a speed in excess of:
- (1) Twenty miles per hour in any business district;
 - (2) Twenty-five miles per hour in any residence district;
 - (3) Forty miles per hour on open country highway;
 - (4) Trucks licensed at eight thousand pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

CHAPTER 89

(House Bill No. 308—By Mr. Morford and Mr. Rife)

[Passed March 6, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to overtaking and passing school busses, the identification of school busses and the concealment or removal of such identification under certain circumstances.

Article 12. *Special Stops Required.*

Section

7. Overtaking and passing school bus.

Be it enacted by the Legislature of West Virginia:

That section seven, article twelve, 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:

Section 7. *Overtaking and Passing School Bus.*—(a)

2 The driver of a vehicle on any street or highway upon
3 meeting or overtaking from either direction any school
4 bus which has stopped on the highway for the purpose
5 of receiving or discharging any school children shall stop
6 the vehicle before reaching such school bus and shall not
7 proceed until such school bus resumes motion, or until
8 signaled by the driver or other authorized person or per-
9 sons to proceed.

10 (b) Every bus used for the transportation of school
11 children shall bear upon the front and rear thereof a
12 plainly visible sign containing the words "school bus" in
13 letters not less than six inches in height. When a contract
14 school bus is being operated upon a highway for purposes
15 other than the actual transportation of children either
16 to or from school all markings thereon indicating "school
17 bus" shall be covered or concealed. Any school bus sold
18 or transferred to another owner by a county board of edu-
19 cation, agency, or individual shall have all lettering re-
20 moved or permanently obscured before sale or transfer is
21 made.

22 (c) The driver of a vehicle upon a highway with sep-
23 arate roadways need not stop upon meeting or passing a
24 school bus which is on a different roadway or when upon
25 a controlled-access highway and the school bus is stopped
26 in a loading zone which is a part of or adjacent to such
27 highway and where pedestrians are not permitted to
28 cross the roadway.

3

CHAPTER 90

(Senate Bill No. 231—By Mr. Smith)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article fourteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the number of passengers that may occupy the seat with the operator of motor vehicles.

Article 14. Miscellaneous Rules.**Section**

5. Passengers in seat with operator.

Be it enacted by the Legislature of West Virginia:

That section five, article fourteen, 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:

Section 5. *Passengers in Seat with Operator.*—No more
2 than three persons including the operator shall ride or
3 be permitted by such operator to ride in the seat with the
4 operator of any motor vehicle while said motor vehicle is
5 being operated on the streets or highways of this state:
6 *Provided, however,* That the limitation of this section shall
7 not apply to a truck cab or truck crew compartment prop-
8 erly designed for the occupancy of four persons including
9 the operator, and so designated on the registration card
10 by the department of motor vehicles.

CHAPTER 91

(House Bill No. 97—By Mr. Watson)

[Passed February 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle administration; equipment.

Article 15. Equipment.**Section**

15. Lamps on parked vehicles.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article fifteen, 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:

Section 15. *Lamps on Parked Vehicles.*—(a) Whenever
2 a vehicle is lawfully parked upon a street or highway
3 during the hours between a half hour after sunset and a
4 half hour before sunrise and in the event there is suffi-
5 cient light to reveal any person or object within a dis-
6 tance of five hundred feet upon such street or highway
7 no lights need be displayed upon such parked vehicle.

8 (b) Whenever a vehicle is parked or stopped upon a
9 roadway or shoulder adjacent thereto, whether attended
10 or unattended, during the hours between a half hour after
11 sunset and a half hour before sunrise and there is not
12 sufficient light to reveal any person or object within a
13 distance of five hundred feet upon such highway, such
14 vehicle so parked or stopped shall be equipped with one
15 or more lamps meeting the following requirements: At
16 least one lamp shall display a white or amber light visible
17 from a distance of five hundred feet to the front of the
18 vehicle, and the same lamp or at least one other lamp
19 shall display a red light visible from a distance of five
20 hundred feet to the rear of the vehicle, and the location
21 of said lamp or lamps shall always be such that at least
22 one lamp or combination of lamps meeting the require-
23 ments of this section is installed as near as practicable
24 to the side of the vehicle which is closest to passing traffic.
25 The foregoing provisions shall not apply to a motor-driven
26 cycle.

27 (c) Any lighted head lamps upon a parked vehicle shall
28 be depressed or dimmed.

CHAPTER 92

(House Bill No. 82—By Mr. Slonaker)

[Passed March 7, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to

weighing motor vehicles and removal or rearrangement of excess loads.

Article 17. Size, Weight and Load.

Section

10. Officers may weigh, measure, etc., vehicles and require removal or rearrangement of excess loads.

Be it enacted by the Legislature of West Virginia:

That section ten, 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:

Section 10. *Officers May Weigh, Measure, etc., Vehicles and Require Removal or Rearrangement of Excess Loads.*

—(a) Any police officer, or employee of the state road commission designated by the state road commissioner as a member of an official weighing crew, may require the driver of any vehicle or combination of vehicles on any highway to stop and submit such vehicle or combination of vehicles to a weighing with portable or stationary weighing devices, or submit such vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if such vehicle or combination of vehicles is in violation of any of the provisions of this article, and may require that such vehicle or combination of vehicles be driven to the nearest weighing device in the event such weighing device is within two miles.

(b) Whenever an officer or a member of an official weighing crew determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article, he may require the driver to stop such vehicle or combination of vehicles in a suitable place to remain standing until such vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of such vehicle or combination of vehicles at the risk of such owner, lessee or borrower: *Provided, however, That*

28 no criminal charge shall be preferred against any driver,
29 operator, or owner of a vehicle when a rearrangement of
30 the load upon the vehicle, without removal therefrom,
31 reduces the axle loads of said vehicle to such limit as is
32 permitted under this chapter.

33 (c) Any driver of a vehicle or combination of vehicles
34 who fails or refuses to comply with any requirement or
35 provision of this section shall be guilty of a misdemeanor.

CHAPTER 93

(Senate Bill No. 170—By Mr. Bowers and Mr. Smith)

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to traffic regulations by the state road commissioner.

Article 17. Size, Weight and Load.

Section

11. Permits for excess size and weight.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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:

Section 11. *Permits for Excess Size and Weight.*—(a)

2 The state road commissioner may in his discretion upon
3 application in writing and good cause being shown there-
4 for issue a special permit in writing authorizing the appli-
5 cant to operate or move a vehicle or combination of
6 vehicles of a size or weight of vehicles or load exceeding

7 the maximum specified in this chapter or otherwise not
8 in conformity with the provisions of this chapter, except
9 that a permit shall not be issued for continuous operation
10 of a vehicle not in conformity with the provisions of this
11 article relating to weight limitations: *Provided, however,*
12 That specially designed vehicles which can only be used
13 to transport and haul specific liquid or semiliquid prod-
14 ucts and which were registered in this state prior to the
15 first day of July, one thousand nine hundred fifty-one,
16 shall be exempt from the provisions of this chapter re-
17 lating to weight limitations until the first day of July, one
18 thousand nine hundred sixty-six, and on and after the
19 latter said date said exemptions shall not apply. In order
20 for the exemption to apply during the period of exemp-
21 tion, the owner or operator shall apply for, and the state
22 road commissioner shall issue, a permit for such vehicle
23 allowing such owner or operator to use the same upon
24 the highways of this state during said period.

25 (b) The application for any such permit shall spe-
26 cifically describe the vehicle or vehicles and load to be
27 operated or moved and the particular highway for which
28 permit to operate is requested, and whether such permit
29 is requested for a single trip or for continuous operation.

30 (c) The state road commissioner is authorized to issue
31 or withhold such permit at his discretion; or, if such per-
32 mit is issued, to limit the number of trips, or to establish
33 seasonal or other time limitations within which the vehi-
34 cles described may be operated on the highways indicated,
35 or otherwise to limit or prescribe conditions of operation
36 of such vehicle or vehicles, when necessary to assure
37 against undue damage to the road foundations, surface,
38 or structures, and may require such undertaking or other
39 security as may be deemed necessary to compensate for
40 any injury to any roadway structure.

41 (d) Every such permit shall be carried in the vehicle
42 or combination of vehicles to which it refers and shall be
43 open to inspection by any police officer or authorized agent
44 of the state road commissioner granting such permit, and
45 no person shall violate any of the terms or conditions of
46 such special permit.

CHAPTER 94

(Com. Sub. for Senate Bill No. 37—Originating in the
Senate Committee on Roads and Navigation)

[Passed February 13, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-a, relating to authority of the state road commissioner to increase the gross weight limitations of vehicles which may be operated upon certain highways or portions thereof designated by him.

Article 17. Size, Weight and Load.

Section

- 11-a. Authority of state road commissioner to increase weight limitations upon highways designated by him.

Be it enacted by the Legislature of West Virginia:

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

Section 11-a. *Authority of State Road Commissioner to Increase Weight Limitations upon Highways Designated by Him.*—If, in the opinion of the state road commissioner, the design, construction and safety of any highway, or portion thereof, are such that the gross weight limitations prescribed in section nine of this article can be increased without undue damage to any such highway, the commissioner may, by order, increase the gross weight limitations of vehicles which may be operated upon any such highway, or portion thereof, designated by him in such order and may establish therein the gross weight limitations which shall thereafter be applicable to the highway or portion thereof so designated by him: *Provided, however,* That the maximum gross weight, including the load

15 established by the commissioner for any such designated
16 highway or portion thereof, shall not exceed seventy
17 thousand pounds, except as otherwise provided in this
18 article: *And provided further*, That no such order of the
19 commissioner shall establish any weight limitation in
20 excess of or in conflict with any weight limitation pre-
21 scribed by or pursuant to acts of Congress with respect
22 to federal-aid highway systems.

—C—

CHAPTER 95

(House Bill No. 104—By Mr. Barker)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article seven-
teen, and section three, article nineteen, chapter seven-
teen-c of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating to penalties
for overloading or violating other restrictions on vehicles.

Article

17. **Size, Weight and Load.**

19. **Parties, Procedure Upon Arrest, and Reports in Criminal Cases.**

Be it enacted by the Legislature of West Virginia:

That section fourteen, article seventeen, and section three,
article nineteen, chapter seventeen-c of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:

Article 17. Size, Weight and Load.

Section

14. Penalties for violation of weight laws; impounding vehicles.

Section 14. *Penalties for Violation of Weight Laws;*

2 *Impounding Vehicles.*—(a) Any owner, lessee or bor-
3 rower who permits a vehicle or combination of vehicles
4 owned by him to be operated with any axle load in
5 excess of that permitted by section eight of this article,
6 plus a tolerance of five per cent, or with a total gross
7 weight in excess of that permitted by section nine of

8 this article, plus a tolerance of five per cent, shall be
9 guilty of a misdemeanor and upon conviction thereof
10 shall be punished as provided in paragraphs (b) and (c)
11 of this section.

12 (b) Any owner, lessee or borrower of a vehicle who
13 shall be convicted of a first offense for a violation of this
14 section shall be punished by a fine of not less than
15 twenty-five dollars nor more than one hundred dollars
16 and in addition thereto shall pay either a fine of one
17 cent per pound for any weight in excess of two thousand
18 pounds over the legal weight for each axle or a fine of
19 one cent per pound for any weight in excess of two
20 thousand pounds over the permissible gross weight for
21 such vehicle or combination of vehicles, whichever is the
22 greater; and any owner, lessee or borrower of a vehicle
23 who shall be convicted of a second offense for a violation
24 of this section shall be punished by a fine of not less than
25 fifty dollars nor more than one hundred dollars and in
26 addition thereto shall pay either a fine of two cents per
27 pound for any weight in excess of two thousand pounds
28 over the legal weight for each axle or a fine of two
29 cents per pound for any weight in excess of two thou-
30 sand pounds over the permissible gross weight for such
31 vehicle or combination of vehicles, whichever is the
32 greater; and any owner, lessee or borrower who shall be
33 convicted of a third or subsequent violation of this sec-
34 tion shall be punished by a fine of not less than seventy-
35 five dollars nor more than one hundred dollars and in
36 addition thereto shall pay either a fine of three cents per
37 pound for any weight in excess of two thousand pounds
38 over the legal weight for each axle or a fine of three
39 cents per pound for any weight in excess of two thou-
40 sand pounds over the permissible gross weight for such
41 vehicle or combination of vehicles, whichever is the
42 greater; and in any case where the gross weight exceeds
43 the statutory limit by five thousand pounds or more, the
44 owner, lessee or borrower of such vehicle shall be fined
45 five cents per pound for each pound of excess gross weight
46 over the said statutory limit, which fine shall be in lieu
47 of the additional fine per pound heretofore in this section
48 provided.

49 (c) In the event any owner, lessee or borrower of a
50 vehicle is charged with violating this section, the vehicle
51 which is charged to be overloaded shall be impounded by
52 the arresting officer and shall not be released to such
53 owner, lessee or borrower unless and until such owner,
54 lessee or borrower either shall have been found guilty
55 and paid any fine assessed against such owner, lessee or
56 borrower, or shall have furnished cash or surety bond
57 in at least double the amount of the fine which may be
58 assessed against such owner, lessee or borrower for such
59 violation of this section and conditioned upon the pay-
60 ment of any such fine and costs assessed for such viola-
61 tion, or shall have been acquitted of such charge. Such
62 owner, lessee or borrower shall be liable for any reason-
63 able storage costs incurred in storing such vehicle: *Pro-*
64 *vided, however,* That if the owner of such vehicle is a
65 resident of or has a principal place of business located
66 in this state, and said vehicle has been duly licensed in
67 the state, then said vehicle shall not be impounded but
68 the arresting officer shall deliver to the driver a written
69 notice stating such violation; the place, date and time; the
70 license number of said vehicle; the title number and name
71 and address of the owner; the driver's name, address, and
72 the number of his operator's or chauffeur's card or permit;
73 and the court, place, date and time for hearing, which
74 shall be within five days of such violation (Saturdays,
75 Sundays, and holidays, excluded). A copy of such notice
76 shall within twenty-four hours be mailed to the owner of
77 said vehicle. Upon the failure by such owner or his or its
78 agent to appear at the designated place and time, or upon
79 failure to pay the fine and costs assessed for such viola-
80 tion, unless such owner shall have been acquitted of such
81 charge, the court shall order a bond or the impounding of
82 said vehicle as provided in this section.

Article 19. Parties, Procedure Upon Arrest, and Reports in Criminal Cases.

Section

3. When person arrested must be taken immediately before a justice of the peace court.

Section 3. *When Person Arrested Must Be Taken Im-*
2 *mediately before a Justice of the Peace or Court.*—When-

3 ever any person is arrested for any violation of this chap-
4 ter punishable as a misdemeanor, the arrested person
5 shall be immediately taken before a justice of the peace
6 or court within the county in which the offense charged
7 is alleged to have been committed and who has jurisdic-
8 tion of such offense and is nearest or most accessible with
9 reference to the place where said arrest is made, in any
10 of the following cases:

11 (1) When a person arrested demands an immediate
12 appearance before such justice or court;

13 (2) When the person is arrested upon a charge of
14 negligent homicide;

15 (3) When the person is arrested upon a charge of driv-
16 ing while under the influence of intoxicating liquor or
17 narcotic drugs;

18 (4) When the person is arrested upon a charge of
19 failure to stop in the event of an accident causing death,
20 personal injuries, or damage to property;

21 (5) When the person is arrested upon a charge of vio-
22 lating section fourteen, article seventeen of this chapter
23 relating to weight violations; except as otherwise pro-
24 vided in that section.

25 In any other event when the person arrested refuses to
26 give his written promise to appear in court as hereinafter
27 provided.

C

CHAPTER 96

(Senate Bill No. 117—By Mr. Nuckols)

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and eleven, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to security following accident and the duration of suspension of licenses, registrations and operating privileges under the motor vehicles safety responsibility law.

Article 3. Security Following Accident.**Section**

- 5. Requirements as to policy or bond.
- 11. Duration of suspension.

Be it enacted by the Legislature of West Virginia:

That sections five and eleven, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 5. *Requirements as to Policy or Bond.*—(a) No
2 policy or bond shall be effective under section four of
3 this article unless issued by an insurance company or
4 surety company authorized to do business in this state,
5 except as provided in subdivision (b) of this section, nor
6 unless such policy or bond is subject, if the accident has
7 resulted in bodily injury or death, to a limit, exclusive
8 of interest and costs, of not less than ten thousand dollars
9 because of bodily injury to or death of one person in any
10 one accident, and, subject to said limit for one person, to
11 a limit of not less than twenty thousand dollars because
12 of bodily injury to or death of two or more persons in any
13 one accident, and, if the accident has resulted in injury to,
14 or destruction of property, to a limit of not less than five
15 thousand dollars because of injury to or destruction of
16 property of others in any one accident.

17 (b) No policy or bond shall be effective under section
18 four of this article with respect to any vehicle which was
19 not registered in this state or was a vehicle which was
20 registered elsewhere than in this state at the effective
21 date of the policy or bond or the most recent renewal
22 thereof, unless the insurance company or surety company
23 issuing such policy or bond is authorized to do business in
24 this state, or if said company is not authorized to do busi-
25 ness in this state, unless it shall execute a power of attor-
26 ney authorizing the commissioner to accept service on
27 its behalf of notice or process in any action upon such
28 policy or bond arising out of such accident.

29 (c) Upon receipt of notice of such accident from the
30 commissioner, the insurance company or surety company

31 named in such notice shall notify the commissioner in
32 such manner as he may require in case such a policy or
33 bond was not in effect at the time of such accident.

Sec. 11. *Duration of Suspension.*—Unless a suspension
2 is terminated under other provisions of this article, any
3 order of suspension by the commissioner under this arti-
4 cle shall remain in effect and no license shall be renewed
5 for or issued to any person whose license is so suspended
6 and no registration shall be renewed for or issued to any
7 person whose vehicle registration is so suspended until:
8 (1) Such person shall deposit or there shall be de-
9 posited on his behalf the security required under this
10 article, or

11 (2) One year shall have elapsed following the date
12 of such suspension and evidence satisfactory to the com-
13 missioner has been filed with him that during such period
14 no action for damages arising out of the accident resulting
15 in such suspension has been instituted.

CHAPTER 97

(Senate Bill No. 247—By Mr. Davis)

[Passed March 10, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a change in the boundary of a city, town or village.

Article 2. Creation, Alteration, Dissolution and Powers of Municipal Corporations.

Section

8. Change of boundary of city, town or village.

Be it enacted by the Legislature of West Virginia:

That section eight, article 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:

Section 8. *Change of Boundary of City, Town or Village.*

2 —Five per cent or more of the freeholders residing in any
3 city, town or village desiring to change the corporate
4 limits thereof, may file their petition in writing with the
5 council thereof, setting forth the change proposed in the
6 metes and bounds of such corporation, and asking that a
7 vote be taken upon the proposed change. Such petition
8 shall be verified and shall be accompanied by an accurate
9 survey showing the territory embraced within the new
10 boundaries. The council, upon bond in penalty prescribed
11 by the council with good and sufficient surety being given
12 by petitioners, and conditioned to pay the costs of such
13 election if a majority of the votes cast are against the pro-
14 posed change in boundary, shall thereupon order a vote
15 of the qualified voters residing in such city, town or village
16 to be taken upon the proposed change at a time and place
17 therein to be named in the order, not less than twenty nor
18 more than thirty days from the date thereof, and if it be
19 proposed to include any additional territory within such
20 corporate limits, the council shall, at the same time order
21 a vote of all the qualified voters residing in such addi-
22 tional territory, and of all persons, firms or corporations
23 owning any part of such territory, whether they reside
24 therein or not, to be taken upon the question on the same
25 day, at some convenient place on or near such additional
26 territory: *Provided*, That the additional territory to be
27 included shall conform to the requirements of section
28 one of this article, and the determination that the addi-
29 tional territory does so conform shall be reviewable by
30 the circuit court on certiorari to the council. The election
31 shall be held, superintended and conducted, and the re-
32 sult thereof ascertained, certified and returned, in the
33 same manner and by the same persons as elections for
34 city, town or village officers. The ballots cast on such
35 question shall have written or printed on them the words:

36 ☐ For change of Corporate Limits

37 ☐ Against change of Corporate Limits

38 If a majority of all the votes so cast within such cor-

39 poration be in favor of the proposed change, and no addi-
40 tional territory is proposed to be included therein, the
41 corporate limits of such city, town or village shall there-
42 after be as proposed by such petition. But, if additional
43 territory is proposed to be included in such corporate
44 limits, such change shall not take effect unless a majority
45 of all the votes cast by persons eligible to vote in such
46 additional territory shall also be cast in favor of such
47 change. Any firm or corporation may vote by its manager,
48 president, or executive officer duly designated in writing
49 by such firm or corporation.

50 When an election is held in any city, town or village
51 respecting a change in the boundary thereof, another such
52 election relating to the same territory or any part thereof
53 shall not be held for a period of one year.

54 The provisions of this and the following section shall
55 provide the exclusive procedure for effecting a change in
56 the boundary of every city, town or village except munici-
57 palities which have adopted a home rule charter under
58 the provisions of chapter eight-a of the code: *Provided,*
59 *however,* That any city, town or village, otherwise author-
60 ized by said chapter eight-a, or by special charter may
61 utilize the procedures respecting minor boundary adjust-
62 ments set forth in section twenty-five, article six of said
63 chapter eight-a.

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CHAPTER 98

(Senate Bill No. 212—By Mr. Handlan)

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article 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 ten-i, relating to special school zone police officers.

Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

Section

10-i. Special school zone police officers.

Be it enacted by the Legislature of West Virginia:

That article 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 ten-i, to read as follows:

Section 10-i. *Special School Zone Police Officers.*—Authority and power is hereby conferred upon any incorporated city or town in this state to provide by ordinance for the appointment of special school zone police officers, who shall have the duty of controlling and directing traffic upon designated parts of streets or roads at or near schools, and who, in the performance of such duty, shall be vested with all the powers of local police officers. Such special police shall be in uniform, shall display a badge or other sign of authority, shall serve at the will and pleasure of the appointing authority, and shall not come within the civil service provisions of article five-a of this chapter or of the pension or relief fund provisions of article six of this chapter, and section eleven, article four, chapter eight-a of the official code, as amended. The council may require such special police officers to give bond, payable to the city or town, in its corporate name, with such sureties and in such penalty as the council may see fit, conditioned for the faithful performance of their duties.

CHAPTER 99

(House Bill No. 236—By Mr. Creek and Miss Tsapis)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article four, chapter eight of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to special charges for municipal services.

Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

Section

20. Special charges for municipal services.

Be it enacted by the Legislature of West Virginia:

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

Section 20. *Special Charges for Municipal Services.*—The governing authority of every municipal corporation that furnishes any essential or special municipal service, including police and fire protection, parking facilities on the streets or otherwise, recreational facilities, street cleaning, street lighting, sewerage and sewage disposal, and the collection and disposal of garbage, ashes or other waste materials, may by ordinance provide for the continuance, maintenance, installation or improvement of such service, may make reasonable regulations with respect thereto, may impose upon the users of such service reasonable rates, fees and charges to be collected in the same manner as municipal taxes are collected or in some other manner specified in the ordinance, and may provide penalties for any violation of such ordinance. The municipal corporation shall not, however, have a lien on any property as security for payments due under such ordinance: *Provided, however,* That any ordinance enacted under the provisions of this section shall be published at least once a week for two successive weeks in two newspapers published in such municipality, or if there be only one newspaper published therein then in that newspaper, or if there be no such newspaper published then by posting copies of such ordinance for a like period in at least ten conspicuous places in such municipality, and in the event thirty per cent of the registered voters by written petition

27 duly signed by them and filed with the municipal author-
28 ity within fifteen days after the expiration of such pub-
29 lishing or posting protest against such ordinance, the or-
30 dinance shall not become effective until it shall be rati-
31 fied by a majority of the votes cast by the duly qualified
32 voters of such municipality at an election duly and regu-
33 larly held as provided by the laws and ordinances of the
34 municipality and the result of such election ascertained
35 and declared. Such election shall be held after notice of
36 such submission shall be given by publication or posting
37 of the same for two successive weeks next prior to the
38 date of such election as above provided for the publica-
39 tion of the ordinance when adopted. The powers hereby
40 given to such municipalities and to the authorities there-
41 of are in addition to and supplemental of the powers
42 named in the respective charters thereof: *Provided, That*
43 in the event fees and charges herein provided for, shall
44 be imposed by the governing body of any municipal cor-
45 poration for the purpose of, and in amounts approximately
46 sufficient, to replace in its general fund such amounts as
47 shall be appropriated to be paid out of ad valorem taxes
48 upon property within the municipality pursuant to an
49 election duly called and held under the constitution and
50 laws of the state to authorize the issuance and sale of
51 general obligation bonds of the municipality for public
52 improvement purposes, in the call for which election it
53 shall be stated that the governing body of the municipi-
54 pality proposes to impose fees and charges in specified
55 amounts under this section for the use of one or more of
56 the services above specified, which shall be related to
57 the public improvement proposed to be made with the
58 proceeds of the bonds, no notice, publication or posting of
59 notice, or referendum or election or other condition or
60 prerequisite to the imposition of such rates shall be re-
61 quired or necessary, other than the legal requirements for
62 issuance and sale of such general obligation bonds.

CHAPTER 100

(Senate Bill No. 111—By Mr. Riley)

[Passed February 20, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article four-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal public works and control thereof.

Article 4-a. Municipal Public Works; Bonds.

Section

1. Definitions.
3. Construction, etc., to be under control of municipal authorities or appointed board.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Definitions.*—(a) The term “municipality”,
2 as used in this article, shall be construed to mean any city
3 or incorporated town in the state of West Virginia; (b)
4 the term “municipal authorities”, as used in this article,
5 shall be construed to mean the mayor and council, or sim-
6 ilar governing body, board or commission of any city or
7 incorporated town; (c) the term “municipal public
8 works”, as used in this article, shall be construed to mean
9 and include cemeteries, incinerator plants, land fill or
10 other garbage disposal systems, hospitals, piers, docks,
11 terminals, airports, drainage systems, flood control sys-
12 tems, the construction, reconstruction and alteration of
13 intracity bridges, including approaches, causeways, via-
14 ducts, underpasses and connecting roadways, public mar-
15 kets, automobile parking facilities (including parking lots,
16 buildings, ramps, curb-line parking, meters and other fa-
17 cilities deemed necessary or incidental to the regulation,

18 control and parking of automobiles), stadiums, gymnasi-
19 ums, sports arenas, public recreation centers, public rec-
20 reation parks, swimming pools, roller skating rinks, ice
21 skating rinks, tennis courts, golf courses, polo grounds,
22 public buildings, including libraries and museums, com-
23 mon jails, grading and/or paving, and/or repaving streets,
24 avenues and alleys; where such works or projects will be
25 made self-supporting, and the construction and/or ac-
26 quisition cost thereof, together with interest thereon, will
27 be returned within a reasonable period, not exceeding
28 thirty years, by means of tolls, fees, rents, special assess-
29 ments or charges other than taxation, and shall mean and
30 include such system, building, plant or project in its en-
31 tirety, and all integral parts thereof, including all neces-
32 sary appurtenances and equipment in connection with
33 any one or more of the above: *Provided*, That when such
34 municipal public works consist of grading and/or paving
35 and/or repaving streets, avenues and alleys and the cost
36 of which is to be paid by special assessment against the
37 abutting property, represented by paving certificates
38 which constitute a lien upon such property and said pav-
39 ing certificates are pledged by any municipality to retire
40 revenue bonds issued and sold to pay the cost of such
41 construction, the payor of such paving certificate shall
42 have the right to pay the same at any time before ma-
43 turity, together with interest thereon to date of payment,
44 and upon the payment of such paving certificate the treas-
45 urer of such municipality shall deliver to the payor a re-
46 lease for such lien, and the funds received therefrom shall
47 by said treasurer be deposited in a special fund to be ex-
48 pended only in the payment of such revenue bonds.

Sec. 3. *Construction, etc., to Be Under Control of Mu-*
2 *nicipal Authorities or Appointed Board.*—The construc-
3 tion, acquisition, improvement, extension, equipment,
4 custody, operation and maintenance of any such works,
5 and the collection of revenues therefrom for the service
6 rendered thereby, shall be under the supervision and con-
7 trol of the municipal authorities, or of a committee or
8 commission of all or a portion of the council or similar
9 governing body of such municipality, or of a board, com-

10 mission or committee appointed by such municipal au-
11 thorities as may be determined by general orders. The
12 term "board" when hereafter used in this article shall be
13 construed to mean the municipal authorities, or such
14 board, commission or committee, as the case may be.

CHAPTER 101

(House Bill No. 377—By Mr. Seibert)

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to city-county planning commissions and the powers thereof.

Article 5. Urban and Rural Planning and Zoning.

Section

13. City-county commission; powers.

Be it enacted by the Legislature of West Virginia:

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

Section 13. *City-County Commission; Powers.*—The governing body of any city located in a county having an established planning commission may, by ordinance, designate such county commission as the city planning commission. The county court of any county within which is located a city having an established planning commission may, by order, designate such city commission as the county planning commission.

A county planning commission designated as a city commission shall have for that city all the powers and duties granted under this article to a city planning com-

12 mission. A city planning commission designated as a
13 county commission shall have for that county all the
14 powers and duties granted under this article to a county
15 planning commission.

16 Any city designating a county planning commission as
17 its city planning commission may contract annually to
18 pay the county a proportionate part of the expenses which
19 is properly chargeable to the planning service rendered
20 such city, and any such payments received by the county
21 shall be appropriated by the county to the county plan-
22 ning commission in addition to any funds budgeted for
23 planning purposes. Any county designating a city plan-
24 ning commission as its county planning commission may
25 contract annually to pay the city a proportionate part of
26 the expenses which is properly chargeable to the plan-
27 ning service rendered such county, and any such pay-
28 ments received by the city shall be appropriated by the
29 city to the city planning commission in addition to any
30 funds budgeted for planning purposes.

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CHAPTER 102

(House Bill No. 219—By Mr. Peters)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chap-
ter eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the authority
of a city or county planning commission to expend funds
and participate in planning assistance programs.

Article 5. Urban and Rural Planning and Zoning.

Section

15. Appropriations; expenditures; gifts.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter eight of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 15. *Appropriations; Expenditures; Gifts.*—After
2 a governing body of a city or a county court has passed
3 an ordinance creating a planning commission, the gov-
4 erning body or county court shall appropriate funds to
5 carry out the duties of the commission.

6 The planning commission shall have authority to ex-
7 pend, under regular city or county procedure as pro-
8 vided by law, all sums appropriated to it for purposes
9 and activities authorized by this article.

10 A city or county may accept gifts and donations for
11 planning commission purposes. Any moneys so accepted
12 shall be deposited with the city or county in a special
13 nonreverting planning commission fund to be available
14 for expenditures by the planning commission for the pur-
15 pose designated by the donor. The disbursing officer of a
16 city or county shall draw warrants against such special
17 nonreverting fund only upon vouchers signed by the presi-
18 dent and secretary of the planning commission.

19 A city or county planning commission is authorized to
20 spend funds made available for the purposes of this
21 article, and to accept and use funds provided for the pur-
22 poses of this article by the government of the United
23 States and any other agency or group whose interests
24 are in harmony with the purposes of this article, in ac-
25 cordance with federal requirements and under such con-
26 ditions as the laws of this state may provide. In this con-
27 nection, the said city or county planning commission is
28 hereby expressly authorized to participate in the federal
29 planning assistance programs as set forth in the "Federal
30 Housing Act of 1954", as amended, and any subsequent
31 acts.

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CHAPTER 103

(House Bill No. 70—By Mr. Seibert and Miss Tsapis)

[Passed March 3, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article five-a, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section twenty-two, relating to the maximum work week for policemen and overtime compensation in any and all municipalities now or hereafter operating under police civil service.

Article 5-a. Civil Service for Police Departments.

Section

22. Maximum work week for policemen; overtime compensation and vacation time.

Be it enacted by the Legislature of West Virginia:

That article five-a, 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 twenty-two, to read as follows:

Section 22. *Maximum Work Week for Policemen; Overtime Compensation and Vacation Time.*—In any and all municipalities in the state now or hereafter operated under police civil service as provided in the foregoing sections of this article, members of the police department subject to and under civil service shall not be required to be on duty more than five days in any calendar week, nor more than eight hours in any one day, unless they shall be compensated as hereinafter provided. For any time spent on duty by any member of a police department under civil service in excess of eight hours in any one day or in excess of forty hours in any one week, such member shall be paid, at a rate not less than his regular rate of pay, for each full hour or allowed equal time off: *Provided, however,* That in time of municipal emergency as hereinafter defined, the foregoing provisions with respect to additional pay or time off shall not apply. A municipal emergency for purposes of this section shall mean an unusual or abnormal condition beyond the municipality's control and a condition beyond its reasonable power to remove or overcome.

CHAPTER 104

(Senate Bill No. 112—By Mr. Riley)

[Passed February 22, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eight 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 an alternative procedure for the acquisition, construction, improvement, extension, equipment, operation and maintenance of a waterworks and the rehabilitation, reconstruction, improvement, extension, operation and maintenance of an existing waterworks.

Article 12. Waterworks.

Section

- 13-a. Alternative procedure for acquisition, operation or extension of a waterworks.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 thirteen-a, to read as follows:

Section 13-a. *Alternative Procedure for Acquisition, Operation or Extension of a Waterworks.*—As an alternative to the procedures herein provided, any municipality is hereby empowered to acquire, construct, improve, extend, equip, operate and maintain a waterworks as defined herein or to rehabilitate, reconstruct, improve, extend, operate and maintain an existing waterworks, and to collect the revenues therefrom for the services rendered thereby, through the supervision, operation and control of a board, committee or commission of all or of a portion of the council or similar governing body of such municipality or of a board, commission or committee, the majority of whose members shall be of such council or similar

14 governing body as may be determined by general orders
15 or ordinances of said council or similar governing body,
16 and, if such alternative procedure is followed, said board,
17 commission or committee shall have and be limited to all
18 the powers, rights and duties possessed by a board, com-
19 mission or committee established pursuant to article
20 four-a, chapter eight of the code of West Virginia, one
21 thousand nine hundred thirty-one, as amended, except
22 that the right to lease said waterworks shall be strictly
23 limited as provided herein.

CHAPTER 105

(House Bill No. 161—By Miss Tsapis)

[Passed February 13, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section fifteen, relating to municipal waterworks systems and the issuance of revenue bonds in connection therewith; and authorizing the acceptance by any municipality of grants, and procurement of loans or temporary advances from and contracts and agreements with, federal agencies, or private parties.

Article 12. Waterworks.

Section

15. Acceptance of grants, and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Be it enacted by the Legislature of West Virginia:

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

Section 15. *Acceptance of Grants, and Procurement of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*— Any municipality is authorized and empowered to accept grants, and procure loans or temporary advances for the purpose of paying part or all of the cost of acquisition or construction of waterworks systems and the construction of betterments and improvements thereto, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any Federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances including the interest thereon shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the municipal waterworks system so recited in each such contract and agreement.

CHAPTER 106

(Senate Bill No. 138—By Mr. Handlan)

[Passed February 21, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to combined municipal waterworks and sewerage systems and the issuance of revenue bonds in connection therewith; and authorizing the acceptance by any municipality of grants, and procurement of loans or

temporary advances from, and contracts and agreements with, federal agencies, or private parties.

Article 13. Combined Waterworks and Sewerage Systems.

Section

13. Acceptance of grants, and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 thirteen, to read as follows:

Section 13. *Acceptance of Grants, and Procurement of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*— Any municipality is authorized and empowered to accept grants, and procure loans or temporary advances for the purpose of paying part or all of the cost of acquisition or construction of combined waterworks and sewerage systems and the construction of betterments and improvements thereto, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article; and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the combined waterworks and sewerage system so recited in each such contract and agreement.

CHAPTER 107

(Senate Bill No. 144—By Mr. Handlan)

[Passed February 21, 1961; in effect ninety days 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 sewage works of municipal corporations and sanitary districts and the issuance of revenue bonds in connection therewith; and authorizing the acceptance by any municipality or sanitary district of grants and procurement of loans or temporary advances from and contracts and agreements with federal agencies or private parties.

Article 13. Sewage Works of Municipal Corporations and Sanitary Districts.

Section

22-a. Acceptance of grants, and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

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:

Section 22-a. *Acceptance of Grants, and Procurement of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*—Any municipality is authorized and empowered to accept grants and procure loans or temporary advances for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency,

12 corporation or individual, which loans or temporary
13 advances may be repaid out of the proceeds of bonds
14 authorized to be issued under the provisions of this article;
15 and to enter into the necessary contracts and agreements
16 to carry out the purposes hereof with the United States
17 of America or any federal or public agency or department
18 of the United States, or with any private agency, cor-
19 poration or individual.

20 In no event shall any such loan or temporary advance
21 be a general obligation of the municipality and such loans
22 or temporary advances, including the interest thereon,
23 shall be paid solely from the proceeds of the bonds au-
24 thorized to be issued under the provisions of this article
25 or the revenues of the said sewage works so recited in
26 each such contract and agreement.

CHAPTER 108

(House Bill No. 40—By Mr. Poindexter and Mr. Griffin)

[Passed March 6, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, four-a and seven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article four by adding thereto a new section, to be designated section two-a, all relating to dentists, dental hygienists, and dental laboratories.

Article 4. Dentists and Dental Hygienists.

Section

2. Who deemed practitioner of dentistry; limitations of article.
- 2-a. Dental technological work.
4. Board of dental examiners.
- 4-a. Powers and duties.
7. Refusal to issue, suspension or revocation of license; grounds.

Be it enacted by the Legislature of West Virginia:

That sections two, four, four-a and seven, article four, chapter thirty of the code of West Virginia, one thousand nine hun-

dred thirty-one, as amended, be amended and reenacted, and that said article four be further amended by adding thereto a new section, to be designated section two-a, all to read as follows:

Section 2. *Who Deemed Practitioner of Dentistry; Limitations of Article.*—Any person shall be regarded as practicing dentistry within the meaning of this article, who shall diagnose or profess to diagnose or treat or profess to treat, any of the diseases or malformations or lesions of the oral cavity, teeth, gums, or maxillary bones, or shall prepare or fill cavities in human teeth, correct malposition of teeth or jaws or supply artificial teeth as substitutes for natural teeth, or administer anaesthetics, general or local, in connection with any of said work, or shall make, produce, reproduce, construct, repair, alter, or restore any prosthetic denture, crown, bridge, or other prosthetic appliance to be used in, upon, in connection with, or as a substitute for, any human tooth, or in, upon, or in connection with the human jaw or associated structure or tissue of the human mouth, or to be used in the treatment of any condition thereof, or perform any other work included in the curricula of recognized dental colleges. To open an office for the practice of dentistry, or to announce to the public in any way a readiness to do any act defined herein as the practice of dentistry, shall be construed as engaging in the practice of dentistry, within the meaning of this article: *Provided, however,* That this section:

(1) Shall not apply to a duly licensed physician or surgeon in the practice of his profession when rendering dental relief in emergency cases, unless he undertakes to reproduce or reproduces lost parts of the human teeth, or to restore or replace lost or missing teeth in the human mouth.

(2) Shall not apply to a dental laboratory in the performance of dental technological work as that term is defined in section two-a of this article so long as the dental laboratory, in the performance of such work, conforms in all respects to the requirements of section two-a of this article, and further shall not apply to persons performing dental technological work, as so defined,

38 under the direct and personal supervision of a licensed
39 dentist or under the direct and personal supervision of
40 a person authorized under the authority of this article
41 to perform any of the acts in this article defined to con-
42 stitute the practice of dentistry so long as such work is
43 performed in connection with, and as a part of, the dental
44 practice of such licensed dentist or other authorized per-
45 son and for his dental patients.

46 (3) Shall not apply to students enrolled in and reg-
47 ularly attending any dental college recognized by the
48 state board of dental examiners, provided their acts are
49 done in said dental college and under the direct and per-
50 sonal supervision of their instructor.

51 (4) Shall not apply to licensed or registered dentists
52 of another state temporarily operating a clinic under the
53 auspices of a duly organized and reputable dental col-
54 lege or reputable dental society, or to one lecturing be-
55 fore a reputable society composed exclusively of den-
56 tists.

57 (5) Shall not apply to licensed dental hygienists in
58 the performance of their duties as otherwise provided by
59 law.

60 (6) Shall not apply to the practice of dentistry by
61 dentists whose practice is confined exclusively to the
62 service of the United States army, the United States
63 navy, the United States public health service, or the
64 United States veteran's bureau, or any other authorized
65 United States government agency or bureau.

Sec. 2-a. *Dental Technological Work.*—A. Words and
2 Phrases Defined.—The following words and phrases when
3 used in this section shall, for the purpose of this section,
4 have the meanings respectively ascribed to them in this
5 subsection:

6 "Dental laboratory" shall mean a person, association of
7 persons, partnership, or corporation performing dental
8 technological work as herein defined or any phase thereof:
9 *Provided*, That there is excluded from such definition
10 licensed dentists and other dental practitioners perform-
11 ing dental technological work, or any phase thereof, and
12 persons performing such work under the direct and per-
13 sonal supervision of a licensed dentist or other dental

14 practitioner, in cases where such dental technological
15 work is performed in connection with, and as a part of,
16 the dental practice of such licensed dentist or other
17 dental practitioner and for his own dental patients;

18 "Dental prosthesis" shall mean any prosthetic denture,
19 crown, bridge, or other prosthetic appliance to be used
20 in, upon, in connection with, or as a substitute for, any
21 human tooth, or in, upon, or in connection with, the
22 human jaw or associated structure or tissue of the human
23 mouth, or in the treatment of any condition thereof;

24 "Dental technological work" or "dental technological
25 service" shall mean the making, production, reproduction,
26 construction, repair, alteration, or restoration of any den-
27 tal prosthesis as herein defined;

28 "Other dental practitioner" shall mean and include
29 those persons excluded from the definition of the practice
30 of dentistry under the provisions of subsections three,
31 four and six of section two of this article and also those
32 persons who hold temporary permits to practice den-
33 tistry or teaching permits which have been issued to them
34 under the provisions of section five of this article; and

35 "Work authorization" shall mean a written order for
36 dental technological work, as herein defined, which has
37 been issued by a licensed dentist of this state or other
38 dental practitioner and contains the items of informa-
39 tion specified in, and otherwise conforms to the require-
40 ments of, subsection "F" of this section.

41 B. Duty to Issue Work Authorization.—It shall be the
42 duty of every licensed dentist of this state and every
43 other dental practitioner of this state, in ordering the
44 performance by any dental laboratory of any dental tech-
45 nological work, to issue therefor a work authorization in
46 accordance with the requirements of this section.

47 C. Work Authorization Required; Compliance with
48 Section.—It shall be unlawful for any person, associa-
49 tion of persons, partnership, or corporation to perform
50 dental technological work, or any phase thereof, unless
51 such work be performed in pursuance of, and in con-
52 formity with, a work authorization as herein defined spe-
53 cifically ordering the same and otherwise be performed
54 in accordance with the requirements of this section, and

55 unless, at the time of such performance, such person,
56 association of persons, partnership, or corporation, have
57 such work authorization in its place of business where
58 such work is performed: *Provided*, That the requirements
59 of this subsection shall not apply to licensed dentists or
60 other dental practitioners, or to their employees work-
61 ing under their direct and personal supervision, in cases
62 where such licensed dentists or other dental practitioners
63 are performing dental technological work in connection
64 with, and as a part of, their own dental practice and for
65 their own dental patients.

66 D. Advertising of Dental Technological Work Prohib-
67 ited.—It shall be unlawful for any person, association of
68 persons, partnership, or corporation, directly or indirectly,
69 by means of newspapers, magazines, publications, direc-
70 tories, pamphlets, radio or television broadcasts or tele-
71 casts, loud speaking devices, displays, outside or inside
72 signs, window signs or markings, letters or other ma-
73 terials sent by United States mail, or other commercial
74 method, whether or not herein specifically enumerated,
75 (1) to advertise or announce that he is engaged in the
76 business of the performance of dental technological work,
77 or any phase thereof; (2) to advertise or announce his
78 ability or willingness to perform for members of the
79 public dental technological work, or any phase thereof;
80 (3) to quote any price for the performance of dental
81 technological work, or any phase thereof; or (4) to ad-
82 vertise or announce any services rendered, or techniques
83 or materials employed, by him in the performance of
84 dental technological work, or any phase thereof: *Pro-*
85 *vided*, That this subsection shall not prevent dental lab-
86 oratories from advertising in dental journals or in other
87 professional dental publications or by means of communi-
88 cations directed and sent solely to dentists and other
89 dental practitioners, or from announcing their business
90 in business and telephone directories so long as such
91 business and telephone directory announcements are
92 limited to name and address and telephone number and
93 do not occupy more than the number of lines necessary
94 to disclose such information, or from displaying the trade
95 name and address of such dental laboratory on the door
96 of its place of business or on name plates or door plates

97 exhibited on the interior or exterior of such place of
98 business, but the lettering on such door, name plates, or
99 door plates shall not exceed seven inches in height.

100 E. Sale or Furnishing of Dental Prosthesis by Person
101 Other Than Licensed Dentist or Other Dental Practi-
102 tioner Prohibited.—It shall be unlawful for any person,
103 association of persons, partnership, or corporation, other
104 than a licensed dentist or other dental practitioner, to
105 sell, offer for sale, or furnish any dental prosthesis or
106 other dental technological service to any person who is not
107 a licensed dentist or other dental practitioner.

108 F. Contents of Work Authorization.—Each work au-
109 thorization issued under the provisions of this section
110 shall contain the following information: (1) The name
111 and address of the dental laboratory to which it is di-
112 rected; (2) the case identification; (3) a specification of
113 the materials to be used; (4) a description of the work
114 to be done, and, if necessary, diagrams thereof; (5) the
115 date of its issuance; and (6) the signature and address
116 of the licensed dentist or other dental practitioner by
117 whom the work authorization is issued. A separate work
118 authorization shall be issued for each patient of the is-
119 suing licensed dentist or other dental practitioner for
120 whom dental technological work is to be performed.

121 G. Retention of Work Authorization.—Every work au-
122 thorization issued under this section shall be made in
123 duplicate. The original thereof shall be delivered to
124 the dental laboratory to which it is directed and shall be
125 retained by it in its office or place of business for the
126 period of two years from its date. The copy thereof shall
127 be retained in the office of the licensed dentist or other
128 dental practitioner by whom it was issued for the period
129 of two years from its date.

130 H. Inspection of Work Authorization.—During the two-
131 year retention period provided in subsection "G" of this
132 section, the dental laboratory by which the original of
133 any work authorization is retained and the licensed den-
134 tist or other dental practitioner by whom the copy thereof
135 is retained, shall at any time during customary office
136 hours, permit any member, employee, or agent of the
137 West Virginia board of dental examiners to have access

138 to, and to make inspection of, any work authorization so
139 retained, and shall provide to such member, employee, or
140 agent of the West Virginia board of dental examiners any
141 information relating to such work authorization and the
142 work performed thereunder which shall be requested
143 by him.

144 I. Inspection of Dental Technological Work.—Every
145 dental laboratory and every person employed by any
146 dental laboratory shall, upon request from any member,
147 employee, or agent of the West Virginia board of dental
148 examiners, display to such member, employee, or agent,
149 and permit the inspection by him of any items of den-
150 tal technological work then in the course of performance
151 by such dental laboratory or person employed by it and
152 any dental prosthesis then in the place of business of,
153 or upon the premises occupied by, such dental laboratory
154 for making, production, reproduction, construction, re-
155 pair, alteration, or restoration, regardless of whether
156 such making, production, reproduction, construction, re-
157 pair, alteration, or restoration has been commenced, is
158 in the course of performance, or has been completed, and
159 shall, upon such request, provide to such member, em-
160 ployee, or agent of the West Virginia board of dental
161 examiners all pertinent information relating to any such
162 dental technological work and any such dental prosthesis,
163 and shall, upon such request, permit any such member,
164 employee, or agent of the West Virginia board of dental
165 examiners to have access to, and to make inspection of,
166 the work authorization covering any such dental pros-
167 thesis.

168 J. Offenses; Penalties.—Each act done by any person
169 in violation of any provision of this section shall be
170 deemed, and shall constitute, a separate offense here-
171 under, and each day that any person shall continue in
172 violation of any provision hereof shall likewise be deemed,
173 and shall constitute, a separate offense hereunder. Any
174 person who shall, within this state, violate any provision
175 of this section shall be guilty of a misdemeanor, and
176 upon conviction thereof, shall be punished as provided in
177 section eighteen of this article.

178 K. Injunction.—Notwithstanding the existence of any

179 other remedy, the West Virginia board of dental examin-
180 ers may, in its name as such and without giving bond,
181 institute and prosecute a suit for an injunction against any
182 person, association of persons, partnership, or corpora-
183 tion who has violated any provision of this section to
184 restrain and prohibit the further violation by such per-
185 son, association of persons, partnership, or corporation of
186 the provisions of this section.

Sec. 4. *Board of Dental Examiners.*—There shall be a
2 state board of dental examiners, known as the "West Vir-
3 ginia Board of Dental Examiners," which shall consist of
4 five practicing dentists, who shall be appointed by the
5 governor, by and with the advice and consent of the
6 senate. Each member of the board at the time of his
7 appointment, and during his term as such member, shall
8 be both a resident and licensed dentist of this state, and
9 shall have been both such resident and licensed dentist
10 for a period of not less than five years immediately pre-
11 ceding his appointment: *Provided, however,* That no per-
12 son shall be eligible for appointment to said board who
13 is in any way connected with or interested in any dental
14 college or dental department of any institution of learning
15 or in a dental supply business.

16 The members of the board in office on the date this sec-
17 tion takes effect shall, unless sooner removed, continue
18 to serve until their respective terms expire and until their
19 successors have been appointed and have qualified. On
20 or before the first day of July, after this section takes
21 effect, and on or before the first day of July in each year
22 thereafter, the governor shall appoint one member to
23 serve a term of five years commencing on the said first
24 day of July: *Provided,* That during the five-year period
25 immediately following the effective date of this section,
26 the governor shall make appointments to the board at
27 such times as shall be necessary to replace members
28 whose terms expire during such period: *And provided*
29 *further,* That during such five-year period, the governor
30 shall appoint members to the board for terms of such
31 respective lengths as shall thereafter permit the term
32 of one member to expire at midnight on the thirtieth
33 day of June of each year. Any member shall be eligi-

34 ble for reappointment for one additional consecutive
35 term.

36 Each appointment under this section, whether for a full
37 term or to fill a vacancy, shall be made by the governor
38 from among three nominees therefor selected by the West
39 Virginia dental society. In the case of an appointment for
40 a full term such nominations shall be submitted to the
41 governor not later than eight months prior to the date
42 on which the appointment shall become effective. In the
43 case of an appointment to fill a vacancy, such nominations
44 shall be submitted to the governor within thirty days
45 after a request for such nominations shall have been made
46 by the governor to the president of such society. In the
47 event of the failure of the society to submit to the gov-
48 ernor nominations for an appointment in accordance with
49 the requirements of this section, the governor may make
50 the appointment without such nominations.

Sec. 4-a. *Powers and Duties.*—The West Virginia board
2 of dental examiners shall examine all qualified applicants
3 for license to practice dentistry or dental hygiene, and it
4 shall license all such applicants who are qualified under
5 applicable statutes and who pass the examinations that
6 may be required by statute or by any legally adopted rule
7 or regulation.

8 The said board shall have the power to make such ex-
9 amination of all applicants appearing before it for any
10 type of license as may be necessary to determine that the
11 applicant is qualified. The said board shall also have the
12 power to revoke or suspend any license issued by it, for
13 cause, after having given the person whose license is
14 sought to be revoked or suspended, an opportunity to
15 be heard in the manner provided by section eight, ar-
16 ticle one, chapter thirty of this code. It shall have the
17 power to reinstate any license revoked or suspended
18 by it.

19 The said board is authorized and empowered to hold
20 and conduct hearings and investigations on the issuance,
21 suspension, revocation, or reinstatement of licenses and
22 on charges of unauthorized practice of dentistry or dental
23 hygiene.

24 The board, acting by and through its members, em-
25 ployees, and agents, is further authorized and empowered,
26 at any time during customary office hours, to enter into
27 the office or place of business of any dental laboratory,
28 licensed dentist or other dental practitioner of this state,
29 and to obtain access to, make inspection of, and request
30 information regarding any work authorization which
31 such dental laboratory, licensed dentist, or other dental
32 practitioner is required under the provisions of section
33 two-a of this article, to retain therein, and is further
34 authorized and empowered to inspect any items of dental
35 technological work then in the course of performance
36 by such dental laboratory or person employed by it, and
37 to inspect any dental prosthesis then in the place of busi-
38 ness of, or upon the premises occupied by, such dental
39 laboratory for making, production, reproduction, con-
40 struction, repair, alteration, or restoration, and to request
41 any information which it, its members, employees, or
42 agents deem to be pertinent relating to any such dental
43 technological work and any such dental prosthesis. For
44 the purpose of this paragraph the definition of terms con-
45 tained in subsection A of section two-a of this article is
46 made expressly applicable.

47 The said board shall have the power to hire, fix the
48 compensation of, and discharge such employees as are
49 necessary for the performance of the powers and duties
50 vested in the said board by law and to expend such sums
51 as said board may deem necessary to maintain an office
52 and to carry out and enforce the provisions of this article.

Sec. 7. *Refusal to Issue, Suspension or Revocation of*
2 *License; Grounds.*—The state board of dental examiners
3 may refuse to issue a license to practice dentistry or
4 dental hygiene in this state, or after issuance may sus-
5 pend or revoke the same, for any of the following causes:

6 (1) The presentation to the board of any diploma,
7 license or certificate illegally or fraudulently obtained, or
8 one obtained from an institution which is not reputable,
9 or one obtained from an unrecognized or irregular insti-
10 tution or state board.

11 (2) Be guilty of gross ignorance or gross inefficiency
12 in his profession.

13 (3) Conviction of a felony; and a certified copy of the
14 record of the court of conviction shall be sufficient proof
15 of such conviction.

16 (4) Announcing or otherwise holding himself out to
17 the public as a specialist or as being specially qualified
18 in any particular branch of dentistry or as giving special
19 attention to any branch of dentistry or as limiting his
20 practice to any branch of dentistry without first comply-
21 ing with the requirements established by the board of
22 dental examiners for such specialty and having been
23 issued a certificate of qualification in such specialty by
24 the board.

25 (5) Be guilty of unprofessional conduct. The following
26 acts or any of them shall be conclusively presumed to be
27 unprofessional conduct:

28 (a) Be guilty of any fraud or deception.

29 (b) The commission of a criminal operation or convic-
30 tion of a crime involving moral turpitude.

31 (c) Chronic or persistent inebriety or addiction to nar-
32 cotics or drugs.

33 (d) Be guilty of the violation of any professional con-
34 fidence or be guilty of disclosing any professional secret.

35 (e) Be grossly immoral.

36 (f) Be guilty of employing what are known as "cap-
37 pers" or "steerers" to obtain business.

38 (g) The obtaining of any fee by fraud or misrepresen-
39 tation.

40 (h) Employ directly or indirectly, or direct or permit
41 any suspended or unlicensed person so employed, to per-
42 form operations of any kind or to treat lesions of the
43 human teeth or jaws or correct malimposed formations
44 thereof.

45 (i) Practice, or offer or undertake to practice, dentistry
46 under any firm name or trade name or under any name
47 other than his own true name: *Provided*, That any licensee
48 may practice under a firm name or partnership name con-
49 taining nothing but the surname of every member of such
50 firm or partnership.

51 (j) Professional connection or association with, or lend-
52 ing his name to another, for the illegal practice of den-
53 tistry, or professional connection or association with any

54 person, firm, or corporation holding himself, themselves,
55 or itself out in any manner contrary to this article.

56 (k) Make use of any advertising relating to the use
57 of any drug or medicine of unknown formula.

58 (l) Advertise to practice dentistry or perform any op-
59 eration thereunder without causing pain.

60 (m) Advertise professional superiority or the perform-
61 ance of professional services in a superior manner.

62 (n) Advertise prices charged for professional service.

63 (o) Advertise by means of large display, flickering, or
64 glaring light signs, or contain as a part thereof the repre-
65 sentation of a tooth, teeth, or bridge work, or any portion
66 of the human head.

67 (p) Employ or make use of advertising solicitors or free
68 publicity press agents.

69 (q) Advertise to guarantee any dental service.

70 (r) Advertise in any manner calculated to, or tending
71 to, deceive or mislead the public: *Provided*, That such
72 licensee may announce, by way of a professional card
73 containing not more than his name, title, degree, office
74 location, office hours, business telephone number, and resi-
75 dence address and telephone number, if desired, and if he
76 limits his practice to a specialty he may announce it, but
77 such card shall not be greater in any case than five inches
78 by six inches in size, and such information may be inserted
79 in public print when not more than two newspaper col-
80 umns in width and two inches in depth; and he may an-
81 nounce his change of place of business, absence from, or
82 return to, business in the same manner, and issue appoint-
83 ment cards to his patients, when the information thereon
84 is limited to matter pertaining to the time and place of
85 appointment and that permitted on the professional card,
86 and he may display his name, title, and degree upon the
87 windows or doors of his office and by a door plate or name
88 plate or office directory when the information is limited
89 to not more than that contained on the professional card,
90 but the name, title and degree of the licensee shall not
91 be displayed on said doors, windows, door plates, and
92 name plates or office directory in lettering greater in
93 height than seven inches.

94 The term advertising, as used in this section, shall be

95 construed to include the use of radio or any loud speaking
96 device or any other similar method or agency.

97 This entire section is passed in the interest of the public
98 health, safety and welfare, and its provisions shall be lib-
99 erally construed to carry out its object and purpose. Each
100 and every provision of this section is hereby declared to
101 be independent and severable, and should any portion or
102 provision or provisions of this section be held unconstitu-
103 tional or for any other reason invalid, the remaining por-
104 tion or portions, or provision or provisions shall not be
105 thereby affected.

CHAPTER 109

(House Bill No. 162—By Mr. Myles)

[Passed March 9, 1961; in effect ninety days from passage. Became a law without the approval of the Governor.]

AN ACT to amend and reenact section ten, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unlawful practice of optometry and providing penalties therefor.

Article 8. Optometrists.

Section

10. Unlawful practice of optometry; penalties; injunctions.

Be it enacted by the Legislature of West Virginia:

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

Section 10. *Unlawful Practice of Optometry; Penalties;*

2 *Injunctions.*—Any corporation or voluntary association
3 shall not practice, or assume to practice, or in any manner
4 to hold itself out to the public as being entitled to practice
5 the profession of optometry, or advertise the title of op-
6 tometrist in such manner as to convey the impression to

7 the public that it is entitled to practice optometry, or fur-
8 nish optometric advice and services, or advertise that,
9 either alone or together with or by or through any person,
10 whether a duly registered and licensed optometrist or not,
11 it has, owns, conducts or maintains an office or place for
12 practice of optometry. Any duly registered and licensed
13 optometrist shall not associate himself with any corpora-
14 tion or voluntary association for the practice of optom-
15 etry, or in any manner practice such profession, on a
16 salary or commission basis, for any such corporation or
17 voluntary association. Any corporation or voluntary asso-
18 ciation violating any of the provisions of this section,
19 or any officer, trustee, director, agent, or employee of such
20 corporation or voluntary association who, either directly
21 or indirectly, engages in any of the acts herein prohibited,
22 or assists such corporation or voluntary association to do
23 such prohibited acts, shall be guilty of a misdemeanor,
24 and upon conviction thereof shall be fined not less than
25 one hundred nor more than one thousand dollars. The
26 fact that any such officer, trustee, director, agent or em-
27 ployee shall be a duly registered and licensed optometrist
28 shall not be held to permit or allow any such corporation
29 or voluntary association to do the acts prohibited herein,
30 nor shall such fact be a defense upon the trial of any of
31 the persons hereinbefore mentioned for a violation of this
32 section. Any duly registered and licensed optometrist
33 who shall violate the provisions of this section shall be
34 guilty of a misdemeanor, and, upon conviction thereof,
35 shall be fined not less than ten dollars nor more than
36 twenty-five dollars, and each and every day such violation
37 continues shall constitute a separate offense; and in addi-
38 tion to the foregoing penalties, such offending optometrist
39 shall have his license to practice suspended for a period
40 of one year by the court in which such conviction is had:
41 *Provided*, That this section shall not apply to a partner-
42 ship of two or more duly registered and licensed optom-
43 etrists who practice under their own names.

44 It shall be unlawful for any registered optometrist to
45 practice his profession as an employee, lessee, or sublessee
46 of any commercial or mercantile establishment or to prac-
47 tice his profession in connection therewith, or to advertise

48 either in person or through any commercial or mercantile
49 establishment that he is a duly registered practitioner,
50 and is practicing or will practice optometry as an em-
51 ployee, lessee, or sublessee of any such commercial or
52 mercantile establishment or in connection therewith. But
53 nothing herein shall be construed to prohibit or prevent
54 the rendering of professional services to the officers and
55 employees of any person, firm or corporation by an op-
56 tometrist, whether or not the compensation for such serv-
57 ices is paid by the officers and employees, or by the em-
58 ployer, or jointly by all or any of them. Any person
59 violating this provision shall be guilty of a misdemeanor,
60 and, upon conviction thereof, shall be fined not less than
61 fifty nor more than five hundred dollars, and each and
62 every day such violation continues shall constitute a sepa-
63 rate offense.

64 The circuit court of any county in which the violation
65 occurred shall have jurisdiction to restrain by injunction
66 the violation of any of the provisions of this article.

CHAPTER 110

(House Bill No. 412—By Mr. Speaker, Mr. Singleton,
and Mr. Brotherton)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections one and five, article three of said chapter, all relating to abolishing the department of public assistance and the office of director of public assistance; creating the department of welfare and the office of commissioner of welfare in lieu thereof, and providing compensation therefor.

Article

1. State Department of Welfare.
3. State Commissioner of Welfare.

Be it enacted by the Legislature of West Virginia:

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

Article 1. State Department of Welfare.

Section

2. State department of welfare.

Section 2. *State Department of Welfare.*—There is hereby created the state department of welfare which shall have and is hereby granted all the powers, authority and duties performed by the department of public assistance which department is hereby abolished. Wherever in this chapter or elsewhere in law reference is made to the department of public assistance such reference shall henceforth be construed and understood to mean the state department of welfare.

Article 3. State Commissioner of Welfare.

Section

1. Commissioner of welfare.
5. Compensation.

Section 1. *Commissioner of Welfare.*—The office of state commissioner of welfare is hereby created. The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and duties vested in and performed by the director of public assistance which office is hereby abolished. Wherever in this chapter or elsewhere in law reference is made to the director of public assistance such reference shall henceforth be construed and understood to mean the state commissioner of welfare.

The commissioner shall be appointed by the governor, with the advice and consent of the senate, for a term of six years, unless removed by the governor. Any appointment to fill a vacancy shall be for the unexpired term.

Sec. 5. *Compensation.*—The commissioner shall receive an annual salary of eight thousand dollars and, in addition, the necessary traveling expenses incident to the performance of his duties. Requisitions for traveling ex-

5 penses shall be accompanied by a sworn and itemized
6 statement which shall be filed with the auditor and pre-
7 served as a public record.

CHAPTER 111

(Senate Bill No. 194—By Mr. McCourt)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section five, article ten, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county funds.

Article 10. Fiscal Provisions.

Section

5. County funds.

Be it enacted by the Legislature of West Virginia:

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

Section 5. *County Funds.*—The amount of the county fund provided each year by a county court shall not be less than twelve per cent of the total which the county is legally authorized to levy for current purposes by section ten, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended: *Provided, however,* That the said twelve per cent of such total shall not be required to be provided by the county court if it shall be determined, prior to the laying of the county's levies, that an amount less than such per cent will be sufficient to meet the reasonably anticipated general needs of the county. Such a determination shall require the agreement of at least two of the following persons: The tax commissioner, the state director, and the member of the county court who is ex officio member

16 of the county council at the time such determination is
17 made. Such a determination shall be in writing; shall
18 state the specific amount determined upon as sufficient
19 to meet the reasonably anticipated general relief needs
20 of the county; shall be signed by the three persons desig-
21 nated or by at least two of them; and shall be filed of
22 record in the office of the tax commissioner. Complete
23 duplicates shall be filed in the office of the state director
24 and with the county court, respectively.

25 The county court shall levy for general relief not less
26 than the amount so determined and agreed: *Provided*
27 *further*, That if a county court finds that expenditures
28 mandatory under other provisions of law aggregate in ex-
29 cess of eighty-eight per cent of the total amount which the
30 county court is authorized by law to levy for current pur-
31 poses, the court may petition the tax commissioner for
32 authority to provide an amount less than that required by
33 the first paragraph of this section. If the tax commissioner
34 finds that other mandatory expenditures for the county
35 will exceed eighty-eight per cent of the authorized total
36 levy for current purposes, he may authorize the county
37 court to provide a lesser amount than that required by
38 said first paragraph, but he shall require the maximum
39 amount possible under the circumstances.

CHAPTER 112

(Senate Bill No. 99—By Mr. Kaufman and Mr. Riley)

[Passed February 21, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and eleven-a, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article one by adding thereto two new sections, designated sections three-a and nine-a, all relating to public libraries.

Article 1. Public Libraries.**Section**

1. Public library and governing authority defined.
2. Power of governing authority to establish and maintain libraries; levy.
3. Regional library defined; apportionment of regional library expenses.
- 3-a. Authority of regional library board to disburse funds.
4. Contract with existing public library.
5. Board of library directors; qualifications; term of office; no compensation.
6. Board of library directors; powers and duties.
7. Free use of libraries.
8. Board of library directors; annual report.
9. Library board to be a corporation; vesting of title to bequests or donations.
- 9-a. Collection of fees and service charges; assessment of fines, etc.; sale of surplus or obsolete materials or equipment; deposit and disbursement of receipts.
- 11-a. Application of article.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Public Library and Governing Authority Defined.*—The term “public library” as used in this article shall be construed to mean a library maintained wholly or in part by any governing authority from funds derived by taxation and the services of which are free to the public, except for those charges for which provision may be made elsewhere in this article. The term shall not, however, include special libraries, such as law, medical or other professional libraries, or school libraries which are maintained primarily for school purposes. The term “governing authority” shall be construed to mean county court, county board of education or the governing body of any municipality.

Sec. 2. *Power of Governing Authority to Establish and Maintain Libraries; Levy.*—A governing authority, either by itself or in cooperation with one or more other such governing authorities, shall have the power to establish, equip and maintain a public library, or to take over,

6 maintain or support any public library already estab-
7 lished. Any library established, maintained or supported
8 by a governing authority may be financed either (1) by
9 the appropriation from the general funds of the governing
10 authority of a sum sufficient for the purpose, or (2) by
11 the imposition of an excess levy for library purposes, in
12 accordance with the provisions of section sixteen, article
13 eight, chapter eleven of this code.

14 Such sums as are appropriated hereunder may be trans-
15 ferred to the public library board for deposit and dis-
16 bursement as the public library board shall direct. By
17 such transfer the governing authority designates the pub-
18 lic library board as its disbursing agent.

Sec. 3. *Regional Library Defined; Apportionment of*
2 *Regional Library Expenses.*—A regional library is a public
3 library established and/or maintained by two or more
4 counties, by action of their governing authorities, under
5 the terms of a contract to which they all agree. The ex-
6 penses of the regional library shall be apportioned be-
7 tween or among the counties concerned on such a basis as
8 shall be agreed upon in the contract.

Sec. 3-a. *Authority of Regional Library Board to Dis-*
2 *burse Funds.*—The governing authorities which maintain
3 a regional library may contribute the apportioned sum to
4 the regional library board, such contributions to be de-
5 posited as the regional library board shall direct and to
6 be disbursed by the officer designated by that board. By
7 such contribution the governing authority designates the
8 regional library board as its disbursing agent.

Sec. 4. *Contract with Existing Public Library.*—The
2 governing authority may, in lieu of supporting and main-
3 taining its own public library, enter into a contract with
4 an existing public library and make annual payments of
5 money to such library, whose library materials and serv-
6 ices shall be available without charge to all persons living
7 within the area represented by such governing authority.
8 Any school board may contract for school library service
9 from an existing public library which shall agree to
10 furnish books to a school or schools under the terms of the
11 contract.

12 All money paid to a library under such a contract shall
13 be expended solely for the maintenance and support of
14 the library.

Sec. 5. *Board of Library Directors; Qualifications; Term of Office; No Compensation.*—Whenever a public library is established under this article the governing authority or authorities, shall appoint a board of five directors, chosen from the citizens at large of such governmental division or divisions, with reference to their fitness for such office, except that in a regional library the board of directors shall consist of not less than five nor more than ten members, with a minimum of one member from each county in the region, the total number of directors and the apportionment of directors by county to be determined by joint action of the governing authorities concerned. In either case directors shall hold office for five years from the first day of July following their appointment, and until their successors are appointed and qualified: *Provided*, That upon their first appointment under this article a proportionate number shall be appointed for one year, for two years, for three years, for four years and for five years; and thereafter all appointments shall be for terms of five years. Vacancies in the board shall be immediately reported by the board to the governing authority and filled by appointment in like manner, and, if an unexpired term, for the remainder of the term only. A director may be removed for just cause in the manner provided by the by-laws of the library board. No compensation shall be paid or allowed any director.

Sec. 6. *Board of Library Directors; Powers and Duties.*
2 —The board of directors of each public library established
3 or maintained under this article shall: (a) Immediately
4 after appointment, meet and organize by electing one
5 member as president and one as secretary, and such other
6 officers as may be necessary. All officers shall hold office
7 for one year and shall be eligible for reelection. (b) Adopt
8 such by-laws, rules and regulations as are necessary for
9 its own guidance and for the administration, supervision
10 and protection of the library and all property belonging
11 thereto as may not be inconsistent with the provisions of

12 this article. (c) Supervise the expenditure of all money
13 credited to the library fund. All money appropriated or
14 collected for public library purposes shall be deposited
15 in the treasury of the governing authority to the credit of
16 the library fund, to be paid out on the certified requisition
17 of the library board, in the manner provided by law for
18 the disbursement of other funds of such governing au-
19 thority, or shall be deposited as the library's board of
20 directors shall direct and be disbursed by the officer
21 designated by that board, such officer before entering
22 upon his duties to give bond payable to and in an amount
23 fixed by the board of directors of the library, conditioned
24 for the faithful discharge of his official fiscal duties. The
25 cost of such bond shall be paid from the library fund. The
26 books, records and accounts of the library board shall be
27 subject to audit and examination by the office of the state
28 tax commissioner of West Virginia. (d) Lease or purchase
29 and occupy suitable quarters, or erect upon ground se-
30 cured through gift or purchase, an appropriate building
31 for the use of such library; and have supervision, care,
32 and custody of the grounds, rooms or buildings con-
33 structed, leased, or set apart for library purposes. (e)
34 Employ a head librarian, and upon his recommendation
35 employ such other assistants as may be necessary for the
36 efficient operation of the library.

Sec. 7. *Free Use of Libraries.*—Each library established
2 or maintained by any governing authority shall be free
3 for the use of all persons living within the area repre-
4 sented by such governing authority, except for those
5 charges for which provision may be made elsewhere in
6 this article. The use of the library is subject to reason-
7 able rules and regulations adopted by the library board.
8 The board may extend the privilege and use of the library
9 to nonresidents upon such terms and conditions as it may
10 prescribe.

11 The board may exclude from the use of the library un-
12 der its charge any person who wilfully and persistently
13 violates any rule or regulation prescribed for the use of
14 the library or its facilities.

1 Sec. 8. *Board of Library Directors; Annual Report.*—

2 The board of directors shall make an annual report for
3 the fiscal year ending June thirtieth to the governing au-
4 thority or authorities appointing it, stating the conditions
5 of the library property, the various sums of money re-
6 ceived from the library fund, and all other sources, and
7 how such money was expended, the number of books and
8 periodicals on hand, the number added and withdrawn
9 during the year, the number of books lent, the number of
10 registered users of such library, with such other statistics,
11 information and suggestions as may be deemed of general
12 interest. A copy of this report shall be sent to the West
13 Virginia library commission.

Sec. 9. *Library Board to Be a Corporation; Vesting of*
2 *Title to Bequests or Donations.*—The board of directors
3 of each public library shall be a corporation; and as such
4 it may contract and be contracted with, sue and be sued,
5 plead and be impleaded, and shall have and use a common
6 seal.

7 The title to all bequests or donations of cash or other
8 personal property or real estate for the benefit of such
9 library shall be vested in the board of directors to be held
10 in trust and controlled by such board according to the
11 terms and for the purposes set forth in the deed, gift,
12 devise or bequest: *Provided, however,* That the person
13 making the bequest or donation of cash or other personal
14 property or real estate for the benefit of such library
15 shall have the right and privilege to vest the title thereto
16 in a trustee, or trustees, of his own selection, and to pro-
17 vide for the selection of successor trustees, and to desig-
18 nate the manner in which said fund or property shall be
19 invested and used.

Sec. 9-a. *Collection of Fees and Service Charges; As-*
2 *essment of Fines, etc.; Sale of Surplus or Obsolete Ma-*
3 *terials or Equipment; Deposit and Disbursement of Re-*
4 *ceipts.*—The board of directors of a library established or
5 maintained under this article may fix, establish, and col-
6 lect such reasonable fees, service and rental charges as
7 may be appropriate; may assess fines, penalties, damages,
8 or replacement costs for the loss of, injury to, or failure to
9 return any library property or material; and may sell

10 surplus, duplicated, obsolete, or other unwanted materials
11 or equipment belonging to the library. All moneys re-
12 ceived from these or other sources in the course of the ad-
13 ministration and operation of the library shall be deposit-
14 ed in the library fund and shall be disbursed by the board
15 of directors in the manner prescribed elsewhere in this
16 article.

Sec. 11-a. *Application of Article.*—Nothing in this arti-
2 cle shall be construed to abolish or abridge any power or
3 duty conferred upon any public library already estab-
4 lished by virtue of any city or town charter or other spe-
5 cial act, or to affect any existing local laws allowing or
6 providing municipal aid to libraries. Any library now
7 operating under any city or town charter or other special
8 act has, however, the privilege of reorganizing under the
9 provisions of this article.

10 All powers granted herein shall be considered to be
11 conferred upon public libraries existing at the time of the
12 passage of this act.

13 Any provision concerning the disbursement of funds,
14 including the designation of the depository of the library
15 funds or of the library board's disbursing officer con-
16 tained in this article, may be adopted by a library board
17 organized under the provisions of this article, notwith-
18 standing any other provisions of law.

CHAPTER 113

(House Bill No. 409—By Mr. Speaker, Mr. Singleton)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting article one thereof; by adding thereto six new articles, designated articles one-a, one-b, one-c, one-d, one-e and one-f; and by redesignating the present article one-a thereof as article one-g and adding to said article one-g a new section, designated section

eleven, all relating to the government and administration of the military forces of the state.

Article

1. **Military Forces of the State.**
- 1-a. **Adjutant General.**
- 1-b. **National Guard.**
- 1-c. **State Retired List and Honorary Militia.**
- 1-d. **Active State Service.**
- 1-e. **Code of Military Justice.**
- 1-f. **Privileges and Prohibitions.**
- 1-g. **Service Medals.**

Be it enacted by the Legislature of West Virginia:

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting article one thereof; by adding thereto six new articles, designated articles one-a, one-b, one-c, one-d, one-e and one-f; and by redesignating the present article one-a as article one-g and adding to said article one-g a new section, designated section eleven, all to read as follows:

Article 1. Military Forces of the State.

Section

1. Definitions.
2. Commander-in-chief.
3. Regulations.
4. Services of the state; state duty.
5. Service of the United States.
6. Federal law and regulations.

Section 1. *Definitions.*—When used in this chapter, unless a different meaning is plainly required by the context:

- a. The term “military forces of the state” shall mean the organized militia, the state retired list, the honorary militia and the state guard, and all other components of the militia of the state which may hereafter be organized.
- b. The term “organized militia” shall mean the West Virginia national guard, including the army national guard, the air national guard and the inactive national guard, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members.

14 c. "Military personnel of the national guard" shall
15 mean all the members of the organized militia.

16 d. "Military" shall mean army or land, air or air force,
17 navy or naval.

18 e. The term "service of the state" or "active service of
19 the state" shall mean active military duty in other than
20 a training status in or with a force of the organized militia
21 or with the adjutant general's department, upon orders
22 of the governor.

23 f. The term "state duty" shall mean duty in a training
24 status or other duty in the interest of the state and the
25 organized militia.

26 g. The term "service of the United States" or "active
27 service of the United States" shall mean active military
28 duty in the armed forces of the United States except
29 active duty for training purposes.

30 h. The term "officer" or "commissioned officer" shall
31 be deemed to include warrant officers.

Sec. 2. *Commander-in-Chief.*—The governor shall be
2 commander-in-chief of the military forces of the state,
3 except those which are in the service of the United States.

Sec. 3. *Regulations.*—The governor shall issue regu-
2 lations for the governance of the military forces of the
3 state which shall have the force and effect of law. Such
4 regulations shall conform to the provisions of this chapter,
5 and as nearly as practicable to the laws and regulations
6 of the United States governing the armed forces of the
7 United States and relating to the organization, discipline
8 and training of the organized militia. Regulations in
9 force at the time of the passage of article one, one-a to
10 one-g of this chapter, not inconsistent with its provisions,
11 shall remain in force until superseded by new regulations
12 issued hereunder.

Sec. 4. *Services of the State; State Duty.*—a. The gover-
2 nor may order all or any part of the organized militia and
3 the state guard or any other person with their consent to
4 active service of the state and all members of the orga-
5 nized militia and the state guard shall be liable for such
6 service.

7 b. The governor may order the organized militia or any
8 part thereof to serve outside the borders of the state and of
9 the United States in order to perform military duty and to
10 participate in parades, review, conferences, encampments,
11 maneuvers, and other training, to participate in military
12 competitions and to attend service schools.

13 c. The adjutant general, may order the organized
14 militia or any part thereof or any military personnel of
15 the national guard or any other person with his consent
16 to state duty within or without the state and with or
17 without compensation.

 Sec. 5. *Service of the United States.*—When the orga-
2 nized militia, or any part thereof, is called for active
3 service of the United States under the constitution and
4 laws of the United States, the governor shall order the
5 same to service, and if the number available is insufficient,
6 the governor may call for and accept as many volunteers
7 as are required for service in the organized militia and
8 state guard. During the absence of units and organiza-
9 tions of the organized militia in the service of the United
10 States, their state designations shall not be given to new
11 organizations, and all organizations and officers on return
12 from such service shall be given their former standing
13 and rank.

 Sec. 6. *Federal Law and Regulations.*—a. The duty of
2 maintaining and governing the military forces of the
3 state not in the service of the United States rests upon
4 the state, subject to constitutional authority. The pur-
5 pose of such forces are two-fold; national defense and
6 service of the state. Their efficiency for both purposes
7 necessarily depends upon systematic uniformity in or-
8 ganization, composition, arms, equipment, training and
9 discipline with the armed forces of the United States and
10 the military forces of other states. Therefore, the gov-
11 ernor shall cause the military forces of the state to con-
12 form to all federal laws and regulations applicable to the
13 same, unless the same shall be incompatible with the
14 state purpose of such forces.

15 b. All matters relating to the organizations, discipline
16 and government of the military forces of the state, not

17 otherwise provided for in this chapter or in regulations,
18 shall be decided by custom, usage and regulations of the
19 armed forces of the United States.

Article 1-a. Adjutant General.

Section

1. Adjutant general's department.
2. The adjutant general.
3. Duties of the adjutant general.
4. Assistant adjutants general.

Section 1. *Adjutant General's Department.*—The adjutant general's department shall be a part of the executive branch of the government charged with the organization, administration, operation and training, supply and discipline of the military forces of the state. The adjutant general shall be the executive head of the adjutant general's department, and shall employ such clerical force and assistants as may be required for the fulfillment of his duties.

Sec. 2. *The Adjutant General.*—The adjutant general shall be appointed by the governor for a term of four years. He shall have the rank of major general, or such other rank as shall be recognized by federal authority. No person shall be appointed adjutant general unless he has had at least six years' commissioned service and attained field grade or higher rank in the organized militia of this or some other state or in the armed forces of the United States, or in all combined. The governor shall require the adjutant general to furnish bond as required by law, which bond shall be filed with the auditor of the state.

Sec. 3. *Duties of the Adjutant General.*—a. The adjutant general shall be chief of staff to the governor and commanding general of the organized militia. He shall direct the planning and employment of the military forces of the state in carrying out their state mission, establish unified command of state forces whenever jointly engaged, coordinate the military affairs with the civil defense of the state and organize and coordinate the activities of all civil agencies including local and state police in event of declaration of a limited emergency by the governor pursuant to article one-d of this chapter. The adjutant

12 general shall direct and control the activities of the civil
13 defense agency provided for by article five of this chapter
14 in time of emergency or disaster. He shall be custodian
15 of all military records of the state and shall keep the same
16 indexed and available for ready reference. He shall keep
17 an itemized account of all moneys received and dispensed
18 from all sources and shall make an annual report to the
19 governor on the condition of the organized militia, re-
20 cepts and expenditures, and such other matters relating
21 to the military forces of the state and the adjutant gen-
22 eral's department as he shall deem expedient.

23 b. The adjutant general shall be responsible for the
24 organization, administration, training and supply of the
25 organized militia and shall cause to be procured, prepared
26 and issued to the organizations of the organized militia
27 all necessary books and blanks for reports, records, re-
28 turns and general administration, and shall, at the ex-
29 pense of the state, cause the military laws, military code,
30 and rules and regulations in force to be printed, bound
31 in proper form, and distributed, one copy to each com-
32 missioned officer, and one each to all the circuit, intermed-
33 iate and criminal court judges, sheriffs and justices of
34 the peace in the state requiring them; and shall procure
35 and supply all necessary textbooks of drill and instruc-
36 tion. He shall keep in his office an accurate account
37 of all state and United States property issued to the
38 state. He shall keep on file in his office, all official
39 bonds required by this chapter; the reports and returns
40 of troops and military forces of the state; and all other
41 writings and papers which are required to be transmit-
42 ted to and preserved at the general headquarters of the
43 organized militia.

44 c. The adjutant general shall keep records of all service
45 personnel from the state of West Virginia, commissioned
46 or enlisted, in any of the wars of the United States, and
47 of individual claims of citizens of West Virginia for serv-
48 ice rendered in such wars. He shall assist all persons re-
49 siding in this state having claims against the United States
50 for pension, bounty or back pay, or such claims as have
51 arisen out of, or by reason of, service in any of said wars.
52 To this end he shall cooperate with the agents or attor-

53 neys of such claimants, furnish to claimants only all nec-
54 essary certificates or certified abstracts from, or copies of,
55 records or documents in his office, and shall in all prac-
56 ticable ways seek to secure speedy and just action in all
57 claims now pending or which may hereafter be filed:
58 *Provided*, That any and all of the above services shall be
59 rendered without charge to the claimant. He shall es-
60 tablish and maintain as a part of his office, a bureau of
61 records of the services of the West Virginia troops during
62 such wars, and shall keep arranged in proper and con-
63 venient form all records and papers pertaining thereto.

Sec. 4. *Assistant Adjutants General*.—The governor
2 shall appoint an assistant adjutant general for air, with
3 the rank of brigadier general, or such other rank as shall
4 be recognized by federal authority, who shall be deputy
5 commander of the air national guard. The governor may
6 also appoint two assistant adjutants general with the rank
7 of colonel or such other rank as shall be recognized by
8 federal authority, one of whom shall be executive officer
9 and administrative assistant to assist the adjutant gen-
10 eral in the administration of the adjutant general's de-
11 partment, and the other to be deputy commander of the
12 army national guard. The assistant adjutants gen-
13 eral shall be upon appointment, federally recognized of-
14 ficers of the air national guard and army national guard,
15 respectively.

Article 1-b. National Guard.

Section

1. Organization of the national guard.
2. Army national guard.
3. Air national guard.
4. Appointment and promotion of officers; oath.
5. Surplus officers; resignations.
6. Dismissal of officers.
7. Noncommissioned officers; appointment, promotion and reduction.
8. Enlistment; qualification; oath.
9. Discharge of enlisted personnel.
10. Inactive national guard.
11. Uniforms, arms, equipment and supplies.
12. Responsibility for military property and funds; bonds; action by attorney general.
13. Assemblies, annual training and other duty.
14. Annual inspection and muster.
15. Absence from drill, parade or other duty; penalty.
16. Pay and allowances.

17. Command pay; inspection, compensation for clerical services and care of property.
18. Injury or death while in service of state.
19. Military fund.
20. Military expenses.

Section 1. *Organization of the National Guard.*—The
2 national guard shall be organized, equipped, disciplined,
3 governed, administered and trained in accordance with
4 the laws and regulations of the federal government for
5 the purpose of organization and governance of the same,
6 and for that purpose, the governor is authorized to or-
7 ganize, reorganize or disband any unit, headquarters or
8 staff therein, to increase or decrease the number of officers
9 and noncommissioned officers and the strength of the
10 national guard or any unit thereof: *Provided, however,*
11 That the governor shall not be required to consent to the
12 organization of any forces required or withdrawal of units
13 organized in the state unless he deems the same in the best
14 interest of the state. The governor, in case of war, insur-
15 rection, invasion or imminent danger thereof, shall have
16 the power to increase the national guard and organize
17 additional units thereof, though the same are not author-
18 ized or provided for by federal laws or regulations.

Sec. 2. *Army National Guard.*—The army national guard
2 shall comprise the army units including army aviation
3 units, which are a part of the West Virginia national
4 guard and the personnel enlisted, appointed, or commis-
5 sioned therein. All members of the army national guard
6 shall be federally recognized as such.

Sec. 3. *Air National Guard.*—The air national guard
2 shall comprise the air units of the West Virginia national
3 guard, except army aviation units, and the personnel en-
4 listed, appointed or commissioned therein. All personnel
5 of the air national guard shall be federally recognized as
6 such.

Sec. 4. *Appointment and Promotion of Officers; Oath.*—
2 a. Oath, appointment and promotion of officers shall be
3 made in conformity with applicable rules and regulations
4 of the federal government.
5 b. Every officer duly commissioned shall, within ten
6 days, after his commission is tendered to him, or within

7 ten days after he shall be personally notified that the
8 same is held in readiness for him by any superior officer,
9 take and subscribe to the oath of office prescribed by the
10 constitution of this state. In case of neglect or refusal to
11 take and subscribe to such oath within the time men-
12 tioned, he shall be deemed to have resigned such office.
13 Such oath shall be taken and subscribed before any offi-
14 cer authorized to take acknowledgments of deeds in this
15 state, or some officer who has taken it himself and who
16 is hereby authorized to administer the same.

Sec. 5. *Surplus Officers; Resignations.*—a. Commis-
2 sioned officers who shall be rendered surplus by reduc-
3 tion, consolidation, or disbandment of organizations, or
4 in any manner provided by law, may be transferred to
5 the inactive national guard in conformity with applicable
6 rules and regulations prescribed by federal authority, or
7 may be discharged.

8 b. An officer may tender his resignation or request
9 transfer from the national guard at any time: *Provided*,
10 That no such resignation shall be accepted unless the
11 officer tendering the same shall furnish the adjutant gen-
12 eral from each property accounting officer concerned a
13 certificate that he has delivered all books and other prop-
14 erty of the state and federal government in his possession
15 to the person authorized to receive the same, and that his
16 accounts for money or public property are correct, and
17 that he is not indebted to the state or federal military
18 authorities.

Sec. 6. *Dismissal of Officers.*—a. No officer of the na-
2 tional guard shall be dismissed unless by reason of resig-
3 nation, approval of findings of an efficiency or medical
4 examining board, withdrawal of federal recognition, the
5 sentence of a court-martial, or for cause as provided in
6 subsection d of this section.

7 b. The efficiency, moral character, incompetency, ina-
8 bility to properly perform his duty, and general fitness for
9 retention in the national guard of any officer may be inves-
10 tigated and determined by an efficiency examining board.

11 c. The physical fitness for further service of any officer

12 of the national guard may be investigated by a medical
13 examining board of officers.

14 d. Efficiency and medical examining boards consist-
15 ing of three or more officers shall be appointed by the ad-
16 jutant general upon recommendation of the commanding
17 officer of the officer under investigation. All members of
18 such boards shall be senior in grade to the officer under in-
19 vestigation, unless unavailable. Such boards shall be vest-
20 ed with the powers of courts of inquiry and courts-martial.
21 Any officer ordered to appear before such a board shall be
22 allowed to appear in person or by counsel, to cross-exam-
23 ine and to call the witnesses in his behalf. He shall at all
24 stages of the proceedings be allowed full access to records
25 pertinent to his case and be furnished copies of the same.
26 If the officer shall fail to appear at the time and place set
27 for the hearing by the board, the board shall proceed to
28 consider the evidence presented to it and make such find-
29 ings as shall be warranted. If the findings of the board
30 are unfavorable to an officer and are approved by the gov-
31 ernor, the governor shall dismiss the officer, transfer him
32 to the state retired list or the honorary militia, or make
33 such other order as may be appropriate.

34 e. Any officer who permanently moves from the state
35 or who is absent without leave from drill, training and
36 other duty for two months, or whose federal recognition
37 is withdrawn may be dismissed automatically.

38 f. In any case in which the adjutant general shall have
39 ground to believe an officer unfit, incompetent, or incapa-
40 ble of performing his duties, he may be dismissed or trans-
41 ferred to the reserve list or honorary national guard, if
42 appropriate, without reference to an efficiency or medical
43 examining board, unless the officer so dismissed or trans-
44 ferred shall, within thirty days after being notified there-
45 of, serve upon the adjutant general notice in writing de-
46 manding a hearing and examination before an appro-
47 priate board.

Sec. 7. *Noncommissioned Officers; Appointment, Pro-
2 motion and Reduction.*—Noncommissioned officers shall
3 be appointed and promoted and may be reduced in ac-
4 cordance with applicable federal laws and regulations:

5 *Provided, however,* That in active service of the state, in
6 cases requiring immediate example, a noncommissioned
7 officer may be reduced to the ranks by his immediate
8 commander, subject to appeal to, and review and approval
9 by, the appointing officer.

Sec. 8. *Enlistment; Qualification; Oath.*—a. The quali-
2 fication for enlistment and re-enlistment, the period of
3 enlistment, re-enlistment and voluntary extension of en-
4 listment, the period of service and the manner and form
5 of transfer and discharge of enlisted personnel of the
6 national guard shall be as prescribed by applicable federal
7 law and regulations: *Provided,* That the governor may
8 extend the period of any enlistment, re-enlistment, volun-
9 tary extension of enlistment and the period of service of
10 enlisted personnel of the national guard for a period not
11 exceeding the duration of an emergency declared by him
12 pursuant to article one-c of this chapter.

13 b. Any person who has been discharged under other
14 than honorable conditions from the national guard of
15 this or any other state or from any component of the
16 armed forces of the United States and has not been re-
17 stored to duty shall not be eligible for enlistment in the
18 national guard.

19 c. Every person enlisted for the national guard shall
20 sign an enlistment paper, which shall be forwarded to
21 the adjutant general, on such form as may be prescribed,
22 which shall contain an oath of allegiance to the state and
23 the United States. Such an oath of allegiance may be
24 taken before any commissioned officer of the national
25 guard, who is hereby authorized to administer the same,
26 or before any civil officer fully authorized to administer
27 oaths.

Sec. 9. *Discharge of Enlisted Personnel.*—a. Enlisted
2 men may be honorably discharged, discharged, or dis-
3 charged dishonorably; but in no case may an enlisted man
4 be dishonorably discharged unless by sentence of a gen-
5 eral court-martial, except as hereinafter provided. No
6 enlisted man shall be honorably discharged from service
7 unless he produces the certificate of his immediate com-

8 manding officer that he has turned over or satisfactorily
9 accounted for all property issued to him.

10 b. Whenever any enlisted man of the national guard
11 shall have performed service therein for the term of his
12 enlistment or re-enlistment, and has turned into the proper
13 officer all state or military property for which he is re-
14 sponsible, his commanding officer shall grant him a full
15 and honorable discharge, except in time of insurrection or
16 invasion or other emergency declared by the governor,
17 when his enlistment shall be automatically extended for
18 the period he shall be in the active service of the state,
19 and until released therefrom by proper order. Discharge
20 for physical disability shall be granted pursuant to appli-
21 cable rules and regulations. The governor may authorize
22 for sufficient reason, and in his discretion, the discharge
23 of enlisted men, with or without their consent, at any
24 time, upon the recommendation of the commanding officer
25 of the unit or organization to which they belong. An
26 enlisted man who cannot, after due diligence, be found,
27 or who shall remove his residence from the state, or to
28 such a distance from the armory of his organization, as to
29 render it impracticable for him to perform properly mili-
30 tary duties, or who shall be convicted of a felony, may be
31 discharged by order of the governor.

32 c. A dishonorable discharge from service in the na-
33 tional guard shall operate as a complete expulsion from
34 the guard, a forfeiture of all exemptions and privileges
35 acquired through membership therein, and disqualifica-
36 tion for any military office under the state. The names of
37 all persons dishonorably discharged shall be published in
38 orders by the adjutant general at the time of such dis-
39 charge, and in two newspapers of opposite politics and
40 general circulation, if such there be, in the locality in
41 which such dishonorably discharged person resides. No
42 person so discharged shall be admitted to any armory or
43 other meeting place of the national guard or to the im-
44 mediate vicinity of any encampment, drill or parade of
45 troops. All commanding officers are hereby required to
46 enforce these prohibitions.

Sec. 10. *Inactive National Guard.*—The inactive nation-
2 al guard shall consist of the persons commissioned, ap-

3 pointed or enlisted therein at the effective date of this
4 article, such officers and enlisted personnel as may here-
5 after be transferred thereto from the army national guard
6 and the air national guard, and such persons as may be
7 enlisted therein, under applicable regulations.

Sec. 11. *Uniforms, Arms, Equipment and Supplies.*—The
2 uniforms, arms, equipment and supplies necessary for per-
3 formance of duties shall be those prescribed by applicable
4 federal laws and regulations. Officers shall provide them-
5 selves with uniforms and equipment prescribed, and there
6 shall be annually allowed, to aid them in procuring and
7 maintaining the same in condition for service, the sum of
8 one hundred dollars each. Such sum shall be paid during
9 the last month of each fiscal year for such year. In the
10 event of service for less than the full fiscal year one
11 twelfth of such sum shall be allowed for each month of
12 service during such year.

Sec. 12. *Responsibility for Military Property and*
2 *Funds; Bonds; Action by Attorney General.*—a. Mil-
3 itary property of the state and of the United States shall
4 be issued, safeguarded, maintained, accounted for, inven-
5 toried, inspected, surveyed and disposed of as provided
6 in applicable laws and regulations of the United States
7 and regulations issued by the adjutant general pursuant
8 to this chapter.

9 b. Every officer of the national guard responsible for
10 military property or funds of the state or of the United
11 States shall give bond to the state in such amount as shall
12 be determined by the adjutant general, with good and
13 sufficient security, to be approved by him, conditioned
14 upon the safekeeping, proper use and care and prompt
15 surrender of such property or funds for which he may
16 be properly responsible.

17 c. When military property is lost, damaged, or destroy-
18 ed through the negligence or fault of a member of the
19 national guard, the amount determined as the value of
20 such property or the cost of repairing the same may be
21 collected from any pay or allowance due or to become
22 due him from the state.

23 d. An action may be maintained in the name of the

24 state in any court having jurisdiction thereof by the at-
25 torney general upon the request of the adjutant general
26 to recover from a member or former member of the or-
27 ganized militia found responsible for military property
28 lost, damaged or destroyed through his negligence or fault,
29 the amount determined as the value of such property or
30 the cost of repairing the same.

Sec. 13. *Assemblies, Annual Training and Other Duty.*

2 —a. Members and units of the organized militia shall as-
3 semble for drill, or other equivalent training, instruction
4 or duties during each year and shall participate in field
5 training, encampments, maneuvers, schools, conferences,
6 cruises or other similar duties each year as may be pre-
7 scribed by the applicable laws and regulations of the
8 United States and of this state.

9 b. Members of the organized militia may be ordered
10 by the governor or under his authority to perform special
11 duty, including but not limited to duty in a judicial pro-
12 ceeding, as a member of or in any other capacity with any
13 military board, or as an investigating officer or as a med-
14 ical examiner.

15 c. Organization and unit commanders may in their
16 discretion order drills of such portion of their command
17 as may be deemed necessary, and may in their discretion
18 order target practice for their command: *Provided*, That
19 if any expense is to be incurred, written authority must
20 be obtained from the adjutant general.

Sec. 14. *Annual Inspection and Muster.*—An annual
2 inspection and muster of each organization of the national
3 guard shall be made by an inspector at such time and
4 place as the adjutant general shall order and direct.

Sec. 15. *Absence from Drill, Parade or Other Duty;*
2 *Penalty.*—a. Organization and unit commanders of the
3 national guard, upon receiving information as to the
4 whereabouts of any officer or enlisted man of their or-
5 ganization who is absent from any drill, parade or other
6 prescribed duty without having been properly excused,
7 may cause such officer or enlisted man to be taken into
8 custody and forthwith conveyed to the organization or
9 unit to be there kept until such duty is completed or until

10 relieved by the organization or unit commander; and said
11 organization or unit commander is hereby authorized to
12 direct any or all members of his command at his discre-
13 tion to apprehend such officer or enlisted man and convey
14 him to the organization or unit.

15 b. Enlisted men who shall, without proper excuse, be
16 absent from or in any other respect be delinquent, at any
17 drill, parade, encampment, or other duty ordered by com-
18 petent authority, may be fined by a summary court not
19 more than five dollars, and imprisoned not more than five
20 days in jail for each offense or delinquency; jail refer-
21 enced, county jail: *Provided*, That the aggregate punish-
22 ment under this section shall not exceed thirty days' jail
23 sentence at any one time.

Sec. 16. *Pay and Allowances.*—a. Pay and allowances
2 for officers and men of the national guard for drill, en-
3 campment or other duty for training prescribed or order-
4 ed by the federal government, shall be such as are pro-
5 vided by the laws of the United States.

6 b. Officers and men of the national guard in active
7 service of the state shall receive the same pay and allow-
8 ances, in accordance with their rank and service, as are
9 prescribed for the armed forces of the United States.
10 Transportation for all personnel and subsistence for en-
11 listed personnel when in active service of the state shall
12 be provided by the state.

13 c. Notwithstanding any of the provisions of this ar-
14 ticle, members of the national guard, may, with their con-
15 sent, perform without pay, or without pay and allowances
16 any duties prescribed by section thirteen of this article
17 pursuant to competent orders therefor: *Provided*, That
18 necessary expenses may be furnished such personnel
19 within the discretion of the adjutant general.

Sec. 17. *Command Pay; Inspection, Compensation for*
2 *Clerical Services and Care of Property.*—a. There shall
3 be paid to each commander of a regiment, group or other
4 corresponding type organization, one hundred dollars per
5 month and to each commander of a battalion, squadron
6 or other equivalent type organization, fifty dollars per
7 month, payable quarterly, to be known as command pay.

8 The governor may, by order, direct such organization
9 commanders to make inspections of the organizations and
10 units in their command, and file reports thereon, not ex-
11 ceeding four visits to each of such organizations and units
12 in any one year, and for which such commanding officer
13 shall receive no other compensation than that mentioned
14 herein, but may be reimbursed his actual traveling ex-
15 penses.

16 b. There shall be allowed to each headquarters of a
17 regiment, group or equivalent type organization the sum
18 of one hundred dollars per month and each headquarters
19 of a battalion, squadron or corresponding type organiza-
20 tion, the sum of fifty dollars per month for clerical serv-
21 ices; and to each company or corresponding type unit, the
22 sum of twenty dollars per month for like services, pay-
23 able quarterly. The commandant of the West Virginia
24 military academy shall be allowed the sum of twenty-five
25 dollars a month, payable quarterly, for like services.

26 c. At the discretion of the adjutant general, there
27 may be paid to the enlisted man who is directly respon-
28 sible for the care and custody of the federal and state
29 property of each organization or unit, the sum of ten dol-
30 lars per month, payable quarterly, upon the certificate
31 of his commanding officer, that he has faithfully and satis-
32 factorily performed the duties assigned him and account-
33 ed for all property entrusted to his care.

Sec. 18. Injury or Death While in Service of State.—

2 A member of the organized militia who, (1) while in ac-
3 tive service of the state, shall receive an injury, or incur
4 or contract any disability or disease, by reason of such
5 duty, or (2) while performing any lawfully ordered state
6 duty, shall without fault or neglect on his part be injured
7 or disabled, and shall be incapacitated from pursuing his
8 usual business or occupation, shall, during the period of
9 such incapacity, receive the pay provided by this article
10 and actual necessary expenses for care and medical at-
11 tendance, including burial and funeral expenses in case
12 of death resulting therefrom. All claims arising under
13 this section shall be inquired into by a board of three offi-
14 cers, at least one being a medical officer, to be appointed,
15 upon the application of the member claiming to be so in-

16 capacitated, or his personal representatives, by the com-
17 manding officer of the organization or unit to which such
18 member is attached or assigned. Such board shall have
19 the same power to take evidence, administer oaths, issue
20 subpoenas and compel witnesses to attend and testify and
21 produce books and papers, and punish their failure to do
22 so, as is possessed by a general court-martial. The find-
23 ings of the board shall be subject to the approval of the
24 officer convening it, and also to the approval of the gov-
25 ernor, either of whom may return the proceedings of the
26 board for revision and for the taking of further testimony.
27 The amount found due such member by such board, to the
28 extent that its findings are approved by the reviewing
29 officers thereof, shall be paid by the treasurer of the state
30 out of any moneys in the military fund unexpended. The
31 widow and children of every officer or soldier killed, while
32 in the service of the state or performing lawfully ordered
33 state duty, shall be suitably provided for by the Legisla-
34 ture.

Sec. 19. *Military Fund.*—The sums of money which
2 may be appropriated by the Legislature for carrying into
3 effect any provisions of this article, and the penalties and
4 collections required thereby to be paid to the treasurer
5 of the state, shall constitute the military fund of the state
6 for the uses and purposes set forth in this article. The
7 state treasurer shall, at the end of each quarter, render
8 to the adjutant general a statement of the condition of the
9 military fund, showing the amount on hand at the begin-
10 ning of the quarter, the amount received and expended
11 during the quarter, and the balance on hand at the end
12 of the quarter. The adjutant general shall furnish the
13 governor a copy of this quarterly report.

Sec. 20. *Military Expenses.*—All payments made under
2 the provisions of this article, except pay and allowances
3 for active service of the state, shall be paid out of the mili-
4 tary fund. All pay and allowances and other expenses in-
5 curred in active service of the state shall be paid out of
6 any moneys in the treasury not otherwise appropriated.
7 The military fund shall be disbursed on warrant of the
8 adjutant general, properly drawn and in such manner as
9 the governor may order, or as may be required by law,

10 but no warrant for funds signed by him shall be honored
11 by the auditor until such adjutant general shall have ex-
12 ecuted and filed such bond as may be required by the gov-
13 ernor. Payments shall be made on proper vouchers, which
14 vouchers shall show the authority under which the ex-
15 penditures are made, contain an itemized statement of the
16 transaction, and be filed for record in the office of the
17 adjutant general. All claims for services rendered or ma-
18 terial furnished shall be approved by the officer ordering
19 the work or material, and shall be over his certificate to
20 the effect that the amount is just and reasonable, and that
21 it has not been previously paid. No expenditures shall
22 be made by any officer until an estimate of the amount
23 and a statement of the necessity therefor shall have been
24 laid before the adjutant general and his approval received.

Article 1-c. State Retired List and Honorary Militia.

Section

1. State retired list.
2. Duty with the national guard.
4. Honorary militia.

Section 1. *State Retired List.*—a. Any member of the
2 national guard who has reached the age of sixty-four
3 years, or shall be retired from service under applicable
4 laws and regulations of the United States, shall be trans-
5 ferred to the state retired list by order of the governor.

6 b. Any officer who has served for at least twenty years
7 in the national guard, or in the national guard and the
8 armed forces of the United States combined, upon his
9 request, may be transferred to the state retired list in a
10 grade one grade higher than the highest grade previously
11 held by him during such service. In computing such
12 twenty-year period, service as an enlisted man shall be
13 counted.

14 c. Any enlisted man who has served at least twenty
15 years in the national guard, or in the national guard and
16 the armed forces of the United States combined, upon his
17 request may be transferred to the state retired list by the
18 governor in a grade equivalent to the highest grade
19 held by him during such service. If said grade was of offi-
20 cer grade, the provisions of subsection b of this section
21 will govern.

22 d. Any officer of the national guard may be transferred
23 to the state retired list on his own request, approved by
24 the adjutant general.

25 e. Any officer of the national guard who has been ren-
26 dered surplus by reduction, disbandment, or reorganiza-
27 tion of a unit or for any other reason, unless transferred
28 to the inactive national guard, may be relieved from duty
29 and command and may be transferred to the state retired
30 or reserve list.

31 f. Any person who has served as an officer in the na-
32 tional guard or in the armed forces of the United States
33 and has been honorably discharged therefrom, may be
34 commissioned and placed on the state retired list in the
35 highest grade previously held by him after complying
36 with such conditions as may be prescribed by regulations
37 issued pursuant to this chapter.

Sec. 2. *Duty with the National Guard.*—Upon recom-
2 mendation of the adjutant general with the consent of the
3 person concerned, the governor may order any person on
4 the state retired list to state duty in or with the national
5 guard for a period not to exceed three months, in which
6 case such person shall rank in his grade from the date of
7 such order.

Sec. 3. *Seniority, Resignation, Discharge, Etc.*—Time
2 spent on the state retired list shall not be credited in the
3 computation of seniority, pay, length of service, or any
4 of the privileges and exemptions pertaining thereto, ex-
5 cept that the time during which he served on active duty
6 by order of the governor shall be so credited. The pro-
7 visions of this article relative to resignation, court-mar-
8 tial, dismissal or discharge, including dismissal or dis-
9 charge on the finding of an efficiency or medical examin-
10 ing board shall be applicable to persons on the state re-
11 tired list.

Sec. 4. *Honorary Militia.*—The governor may appoint
2 and commission any person, with such rank as he may fix,
3 to serve in the honorary militia and may appoint and com-
4 mission an honorary staff of such number and rank as
5 he may deem advisable to serve during his term of office.

- 6 Members of the honorary militia shall not be held to be
- 7 a part of the organized militia.

Article 1-d. Active State Service.

Section

1. Calling out national guard by governor.
2. Limited emergency.
3. Command to assembly or mob to disperse.
4. Penalty for failure to disperse.
5. Power of officers.
6. Assaults on national guard or persons aiding them; penalty.
7. Repelling assault.
8. Failure to retire from unlawful assembly; penalty.
9. National guard to have right of way.
10. Regulation of occupancy of streets for passage of national guard.
11. Transportation of officers and men.
12. Arrest of trespassers and disturbers; prohibition of sales, gambling, spirituous beverages and disorderly places.
13. Regulations while military forces on duty.
14. Martial law.

Section 1. *Calling Out National Guard by Governor.*—

- 2 In event of war, insurrection, rebellion, invasion, tumult,
- 3 riot, mob or body of men acting together by force with
- 4 intent to commit a felony or to offer violence to persons
- 5 or property, or by force and violence to break and resist
- 6 the laws of this state or the United States, or in case of
- 7 the imminent danger of the occurrence of any of said
- 8 events, or in event of public disaster or emergency, the
- 9 governor shall have power to order the West Virginia
- 10 national guard, or any part thereof, into the active serv-
- 11 ice of the state, and to cause them to perform such duty
- 12 as he shall deem proper.

- ##### **Sec. 2. *Limited Emergency.*—**In time of public disaster or emergency, the governor may declare a limited emergency in the affected area and designate the commander of the national guard units called to duty to coordinate and direct the activities of all persons, organizations and agencies participating in the evacuation, safeguarding, relief and rehabilitation of the affected area, delegating to such commander such authority as he deems necessary and expedient in the circumstances. The commander so designated by the governor shall act for and on behalf of the governor and take all actions in his name.
- 12 Nothing contained in this section shall be construed to
 - 13 limit or deny the authority of the governor to declare
 - 14 martial law.

Sec. 3. *Command to Assembly or Mob to Disperse.*—

2 Before using any military force in the dispersion of any
3 riot, rout, tumult, mob or unlawful assembly, or combina-
4 tion mentioned in this article, it shall be the duty of the
5 civil authorities present, or if none be present, then of the
6 officer in command of the troops, or some person by him
7 deputed, to command the persons composing such riotous,
8 tumultuous or unlawful assembly or mob to disperse and
9 retire peaceably to their respective abodes and business;
10 but in no case shall it be necessary to use any set or par-
11 ticular form of words in ordering the dispersion of any
12 riotous, tumultuous or unlawful assembly; nor shall
13 any such command be necessary where the officer or per-
14 son, in order to give it, would necessarily be put in immi-
15 nent danger of loss of life or great bodily harm, or where
16 such unlawful assembly or mob is engaged in the commis-
17 sion or perpetration of any forcible or atrocious felony,
18 or in assaulting or attacking any civil officer or person
19 lawfully called to aid in the preservation of the peace, or
20 is otherwise engaged in actual violence to persons and
21 property.

Sec. 4. *Penalty for Failure to Disperse.*—Any person

2 or persons composing or taking part in any riot, rout, tu-
3 mult, mob or lawless combination or assembly mentioned
4 in this article, who, after being duly commanded to dis-
5 perse, as provided in the preceding section, willfully and
6 intentionally fails to do so as soon as practicable, shall be
7 guilty of a felony, and, on conviction thereof, shall be
8 imprisoned in the penitentiary for not less than one nor
9 more than two years.

Sec. 5. *Power of Officers.*—After any person or persons,

2 composing or taking part, or about to take part, in any
3 riot, rout, mob, tumult, or unlawful combination or as-
4 sembly mentioned in this article shall have been duly
5 commanded to disperse, or when the circumstances are
6 such that no such command is requisite under the pro-
7 visions of this article, and the civil authority to whom
8 such military force is ordered to report, or if there be no
9 civil authority present, then such military officer acting
10 within the limits provided in his orders shall take such
11 steps for the arrest, dispersion, or quelling of the persons

12 composing or taking part in any such mob, riot, tumult,
13 outbreak, or unlawful combination or assembly mentioned
14 in this article, as may be required, and if, in doing so, any
15 person is killed, wounded, or otherwise injured, or any
16 property injured or destroyed, by the civil authority or
17 officer or member of the national guard, or other persons
18 lawfully aiding them, such officer, member or person shall
19 be held guiltless.

Sec. 6. *Assaults on National Guard or Persons Aiding Them; Penalty.*—It shall be unlawful for any person to
2 assault, fire upon, or throw any missile at, against or upon
3 any member or body of the national guard, or civil officer,
4 or other person lawfully aiding them, when going to, re-
5 turning from, or assembled for performing any duty un-
6 der the provisions of this article; and any person so of-
7 fending shall be guilty of a felony, and, on conviction, shall
8 be imprisoned in the penitentiary for not less than two
9 nor more than five years.

Sec. 7. *Repelling Assault.*—If any portion of the na-
2 tional guard, or any person lawfully aiding them in the
3 performance of any duty, under the provisions of this ar-
4 ticle, is assaulted, attacked or in imminent danger thereof,
5 the commanding officer of such national guard need not
6 await any orders from any civil authority but may at once
7 proceed to quell such attack and disperse the attacking
8 parties, and take all other needful steps for the safety of
9 his command.

Sec. 8. *Failure to Retire from Unlawful Assembly; Penalty.*—Whenever any shot is fired or missile thrown
2 at, against or upon any body of the national guard, or up-
3 on any officer or member thereof, assembling or assemb-
4 led for the performance of any duty under the provisions
5 of this article, it shall forthwith be the duty of every per-
6 son in the assembly from which such shot is fired, or mis-
7 sile thrown, to immediately disperse and retire therefrom,
8 without awaiting any order to do so; and any person
9 knowing or having reason to believe that a shot has been
10 so fired, or missile thrown from any assembly of which
11 such person forms a part or with which he is present, and
12 failing without lawful excuse to retire immediately from
13

14 such assembly, shall be guilty of a misdemeanor; and any
15 person so remaining in such assembly, after being duly
16 commanded to disperse, shall be guilty of a felony, and
17 on conviction shall be imprisoned in the penitentiary not
18 less than one nor more than two years.

Sec. 9. *National Guard to Have Right of Way.*—Any
2 portion of the national guard parading or performing any
3 duty according to law shall have the right of way in any
4 street or highway through which they may pass: *Provid-*
5 *ed,* That the carriage of United States mails and opera-
6 tions of fire engines and fire departments shall not be
7 interfered with thereby.

Sec. 10. *Regulation of Occupancy of Streets for Passage*
2 *of National Guard.*—Whenever any portion of the national
3 guard is or has been called out for the performance of any
4 duty under the provisions of this article, it shall be lawful
5 for the commanding officer of such national guard, if it
6 be deemed advisable in the circumstances of the emer-
7 gency, to prohibit all persons from occupying or passing
8 on any street, road, or place, or where the national guard
9 may be for the time being, and otherwise to regulate the
10 passage and occupancy of such streets and places. Any
11 person, after being duly informed of such regulations,
12 who willfully and intentionally without any lawful ex-
13 cuse, attempts to go or remain on such street, road, or
14 place, and fails to depart after being warned to do so, shall
15 be guilty of a misdemeanor, and, on conviction thereof,
16 shall be fined not less than ten dollars nor more than one
17 hundred dollars, or imprisoned in the county jail not less
18 than ten nor more than sixty days, or both; and in such
19 case the officer in command of the national guard may
20 forthwith arrest persons so offending and turn them over
21 to some civil authority.

Sec. 11. *Transportation of Officers and Men.*—The sev-
2 eral railroads and other transportation companies in this
3 state shall furnish transportation for all officers and en-
4 listed men in the national guard, together with the stores,
5 ammunition and equipment, when traveling on duty un-
6 der orders from competent authority, on request of the
7 officer desiring transportation, which request shall state

8 the number of persons to be carried, and their destination,
9 and for such transportation said companies shall be en-
10 titled to receive compensation from the state at the rate
11 specified.

Sec. 12. *Arrest of Trespassers and Disturbers; Prohibition of Sales, Gambling, Spirituous Beverages and Disorderly Places.*—a. Any person who shall, after due warning, trespass upon any armory, camp, range, or other facility of the national guard or other place where any force of the national guard is performing military duty, or who shall in any manner interrupt or molest the discharge of military duties by any member or force of the national guard, or who shall interrupt or prevent the passage of troops of the national guard, or who shall insult, by jeer or otherwise, any member of the national guard, or refuse to obey any lawful order of the military commander, may be placed in arrest by any officer of the force performing such military duty at the place where the offense is committed and delivered to the proper civil authorities.

16 b. The commanding officer of any force of the national
17 guard performing military duty in or at any armory, ar-
18 senal, camp, range, base or other facility of the national
19 guard or other place or area where such force is perform-
20 ing duty in the service of the state may prohibit persons
21 from hawking, peddling, vending, selling, or auctioning
22 goods, wares, merchandise, food products or beverages,
23 and may prohibit all gambling, or the sale or use of spirit-
24 uous beverages, or the establishment or maintenance of
25 a disorderly place, within the limits of such armory, ar-
26 senal, camp, range, base or other facility of the national
27 guard or other place or area where such force is perform-
28 ing duty, or within such limits not exceeding one mile
29 therefrom as he may prescribe.

Sec. 13. *Regulations while Military Forces on Duty.*—
2 When any portion of the military forces of this state shall
3 be in active service of the state, pursuant to this article,
4 the code of military justice and the general regulations for
5 the government of the armed forces of the United States
6 shall be considered in force and regarded as a part of this
7 article until such forces shall be duly relieved from such

8 duty. No punishment under such rules and articles which
9 shall extend to the taking of life shall, in any case, be in-
10 flicted except in time of actual war, invasion, or insurrec-
11 tion, declared by proclamation of the governor to exist and
12 then only after the approval of the governor of the sen-
13 tence inflicting such punishment.

Sec. 14. *Martial Law*.—In the event of invasion, insur-
2 rection, rebellion or riot, flood or other public disaster or
3 emergency, the governor, in his discretion, may by proc-
4 lamation containing such powers as would meet the exi-
5 gencies of the situation, declare a state of martial law or
6 rule in the towns, cities, districts or counties where such
7 disturbances or emergencies exist.

Article 1-e. Code of Military Justice.

Section

1. Military courts; jurisdiction.
2. Courts-martial generally.
3. Appointment and composition of military courts.
4. Forms; practice; procedure.
5. Personnel of courts-martial.
6. Secrecy of proceedings.
7. Powers of president; witnesses; oaths.
8. Charges; trial.
9. General court-martial; offenses by commissioned officers; penalties.
10. Special court-martial; offenses by commissioned officers; penalties.
11. General court-martial; offenses by enlisted men; penalties.
12. Special court-martial; summary court-martial; offenses by enlisted men; penalties.
13. Form of summons.
14. Service of summons; penalty for failure.
15. Trial; judgment; duties of sheriff; penalty.
16. Form of execution.
17. Courts of inquiry.
18. Disorderly conduct before military court; penalty.
19. Record and approval of court-martial sentence.
20. Reconvening court-martial.
21. Collection and disposition of fines.
22. Execution in aid of collection of fines and penalties.
23. Failure of sheriff to execute process or return fines.
24. Actions against members of military courts.
25. Trial by civil authorities.

Section 1. *Military Courts; Jurisdiction*.—Military
2 courts of this state shall be: (a) General courts-martial;
3 (b) special courts-martial; (c) summary courts-martial;
4 (d) courts of inquiry; and shall have jurisdiction over
5 any officer, warrant officer, or enlisted man of the military
6 forces of the state and other persons subject to military
7 law for any crime made punishable by this article. The

8 jurisdiction of the courts established by this article shall
9 be presumed and the burden of proof shall rest with the
10 person seeking to oust any such court of jurisdiction in
11 any matter or proceeding.

Sec. 2. *Courts-Martial Generally.*—Officers shall be tri-
2 able only by general courts-martial and special courts-
3 martial, and in no case, whether officer or enlisted man,
4 shall a person be tried by persons inferior in rank or grade
5 when it can feasibly be avoided. An enlisted man may
6 request that at least one third of a general or special
7 courts-martial total membership consist of enlisted men.

Sec. 3. *Appointment and Composition of Military*
2 *Courts.*—(a) General courts-martial shall be appointed
3 by the governor, and shall consist of not less than five
4 members. (b) Special courts-martial may be appointed
5 by the governor, or as provided in the manual for courts-
6 martial, United States army, and shall consist of not less
7 than three members. (c) Summary courts-martial may be
8 appointed by the governor, or as provided in the manual
9 for courts-martial, United States army, and shall consist
10 of one officer. (d) Courts of inquiry may be appointed by
11 the governor, or as provided in the manual for courts-
12 martial, United States army, and shall consist of from one
13 to three officers.

Sec. 4. *Forms; Practice; Procedure.*—The practice and
2 procedure of courts-martial and courts of inquiry shall
3 conform to the procedure of similar courts in the army of
4 the United States, except as otherwise specially provided
5 herein. Such forms as are necessary for carrying into
6 effect the provisions of this article shall be prescribed by
7 the governor. The president of any military court author-
8 ized herein shall have authority to appoint and dismiss
9 required clerks and reporters and the compensation there-
10 for shall be taxed as costs in such case. The clerk of a
11 summary court shall receive a reasonable compensation
12 to be fixed by the court, not to exceed one dollar for each
13 man tried.

Sec. 5. *Personnel of Courts-Martial.*—The senior in
2 rank among the members present is the president and pre-

3 siding officer of the court. The person ordering a general
4 court-martial may appoint a law officer for the same.

Sec. 6. *Secrecy of Proceedings.*—The proceedings and
2 sentence of a courts-martial shall be kept secret until the
3 same shall have been approved by proper authority. In
4 any event, the vote and opinion of any member of a court
5 shall be kept secret unless such is required to be revealed
6 in a court of record.

Sec. 7. *Powers of President; Witnesses; Oaths.*—The
2 president of a court-martial shall have power to issue
3 subpoenas for the arrest of accused persons and to bring
4 them before the court for trial whenever such persons
5 shall have disobeyed an order in writing from the conven-
6 ing authority to appear before such a court, a copy of the
7 charge or charges having been delivered to the accused
8 with such order, and to issue subpoenas and subpoenas
9 duces tecum and to enforce attendance of witnesses and
10 the production of books and papers, and to sentence for a
11 refusal to be sworn or to answer as provided in actions
12 before civil courts. All military courts shall have power
13 to administer oaths as required by the manual for courts-
14 martial, United States army.

Sec. 8. *Charges; Trial.*—When an officer or enlisted
2 man is put under arrest for the purpose of trial, a copy
3 of the charges and specifications upon which he is to be
4 tried shall be delivered to him or left at his last known
5 place of abode or business, within twenty days after ar-
6 rest, and a court shall be ordered for his trial within thirty
7 days after the notice of arrest is received by the officer
8 authorized to order the court. He may be held in any jail
9 or other place of detention or released upon his own recog-
10 nizance or upon such bail as is deemed necessary by the
11 circuit court of the county in which he is detained. If a
12 copy of the charges and specifications be not served, or a
13 court be not ordered within the time herein limited, then
14 arrest shall cease; but such charges and specifications may
15 be served, a court ordered and the officer or enlisted man
16 brought to trial within twelve months after such release
17 from arrest. The appearance of the accused, without ob-
18 jection, and pleading to the charges, shall be deemed a

19 waiver of any defect or irregularity of such service of any
20 of the papers mentioned in this section. If an officer or
21 enlisted man who has been ordered or duly summoned to
22 appear before a military court for trial fails to appear, the
23 court may enter a plea of not guilty for him and proceed
24 to trial in his absence.

Sec. 9. *General Court-Martial; Offenses by Commis-*
2 *sioned Officers; Penalties.*—Commissioned officers may be
3 tried by a general court-martial for the following reasons
4 and offenses:

- 5 (a) For unmilitary or unofficer-like conduct;
- 6 (b) For drunkenness on duty;
- 7 (c) For neglect of duty;
- 8 (d) For disobedience of orders or any act contrary to
9 the provisions of this article, or to the provisions of the
10 regulations for the government of the national guard;
- 11 (e) For refusing to grant a discharge to an enlisted man
12 when entitled to the same;
- 13 (f) For oppression or injury of anyone under his
14 command;
- 15 (g) For a combination or attempt to break, resist or
16 evade the laws or lawful orders, given to a person, or ad-
17 vising any person so to do;
- 18 (h) For insult to a superior officer;
- 19 (i) For presuming to exercise his command while un-
20 der arrest or suspension;
- 21 (j) For neglect or refusal when commanding officer
22 to order out the troops under his command when required
23 by law or lawfully ordered by his superior officer;
- 24 (k) For neglect or refusal to make a draft or detach-
25 ment when lawfully ordered to do so;
- 26 (l) For parading the troops under his command on
27 days of election contrary to law;
- 28 (m) For receiving any fee or gratuity for any cer-
29 tificate;
- 30 (n) For neglect, when detailed to drill or instruct a
31 command, to make complaint for neglect or violation of
32 duty as provided by law, or for any other neglect for
33 which a commanding officer would be liable;
- 34 (o) For making a false certificate, account or muster
35 or parade or property return;

36 (p) For conduct unbecoming an officer or a gentleman,
37 or for conduct to the prejudice of good order and military
38 discipline.

39 On conviction of any of the above-named offenses, offi-
40 cers may be sentenced to be dismissed, and shall thereby
41 become incapacitated from holding any military commis-
42 sion, may be fined to any amount not exceeding two hun-
43 dred dollars, and in addition, may be confined for a period
44 not exceeding sixty days in the county jail of any county
45 in the state, except, however, that the maximum penal-
46 ties herein set forth shall not be regarded as affecting or
47 limiting such penalties as may be imposed under other
48 sections of this article. The order of the general court-
49 martial directed to the jailer of such jail shall be sufficient
50 authority for said jailer to receive and confine said
51 prisoner.

Sec. 10. *Special Court-Martial; Offenses by Commis-*
2 *sioned Officers; Penalties.*—Commissioned officers may be
3 tried by a special court-martial for the same offenses list-
4 ed under section nine, except that upon conviction of any
5 of the named offenses, officers may be fined to any amount
6 not exceeding one hundred dollars, and in addition, may
7 be confined for a period not exceeding thirty days in the
8 county jail of any county in the state, except, however,
9 that the maximum penalties herein set forth shall not be
10 regarded as affecting or limiting such penalties as may be
11 imposed under other sections of this article. The order
12 of the special court-martial directed to the jailer of such
13 jail shall be sufficient authority for said jailer to receive
14 and confine said prisoner.

Sec. 11. *General Court-Martial; Offenses by Enlisted*
2 *Men; Penalties.*—Enlisted men, in time of peace, may be
3 tried by a general court-martial:

- 4 (a) For disobedience of orders;
- 5 (b) For disrespect to his superior;
- 6 (c) For mutiny;
- 7 (d) For desertion;
- 8 (e) For drunkenness on duty;
- 9 (f) For conduct prejudicial to good order and military
10 discipline;

11 (g) For any act contrary to the military code, or to
12 the provisions of the regulations for the government of
13 the national guard.

14 On conviction, such enlisted man may be sentenced to
15 be dishonorably discharged with loss of time served, rep-
16 rimanded, reduced to the ranks, or may be fined not to
17 exceed one hundred dollars, and in addition thereto, may
18 be confined in the county jail for a period of not exceeding
19 sixty days in any county within the state, except, how-
20 ever, that the maximum penalties herein set forth shall
21 not be regarded as affecting or limiting such penalties as
22 may be imposed under the other sections of this article.
23 The order of the general court-martial directed to the
24 jailer of such jail shall be sufficient authority to receive
25 and confine such prisoner in such jail.

Sec. 12. *Special Court-Martial; Summary Court-Mar-*
2 *tial; Offenses by Enlisted Men; Penalties.*—Enlisted men
3 may be tried by a special court-martial or a summary
4 court-martial for the same offenses listed under section
5 eleven, except that on conviction by a special court-mar-
6 tial such enlisted man may be reprimanded, reduced to
7 the ranks, or may be fined not to exceed fifty dollars, and
8 in addition thereto may be confined in the county jail for
9 a period of not exceeding thirty days in any county in the
10 state, except, however, that the maximum penalties here-
11 in set forth shall not be regarded as affecting or limiting
12 such penalties as may be imposed under other sections of
13 this article. In the case of a summary court-martial, on
14 conviction, such enlisted man may be reprimanded, fined
15 not to exceed twenty-five dollars, and in addition thereto
16 may be confined to the county jail for a period of not ex-
17 ceeding fifteen days in any county in the state, except,
18 however, that the maximum penalties herein set forth
19 shall not be regarded as affecting or limiting such penal-
20 ties as may be imposed under other sections of this article.
21 The order of the court-martial directed to the jailer of
22 such jail shall be sufficient authority for said jailer to
23 receive and confine said prisoner.

Sec. 13. *Form of Summons.*—The form of summons
2 issued by summary courts provided by this article shall
3 be substantially as follows:

4 SUMMONS

5 The State of West Virginia:

6 To....., who is hereby designated
7 and directed to serve this summons:8 You are commanded to summon.....
9 to personally appear before the summary court for the
10 trial of himself, which will meet pursuant to the laws of
11 the State of West Virginia, at (address).....
12 (city)....., West Virginia, on the.....
13 day of....., 19....., at o'clock..... M.,
14 by virtue of..... Orders No..... from Head-
15 quarters..... to answer delinquencies for
16 offenses against..... (herein
17 describe briefly the offense charged).....18 Given under my hand this the..... day of.....,
19 19.....

20 (Signed).....

21 (Signature and rank of presiding officer)

22 West Virginia National Guard,

23 President of the Court.

Sec. 14. *Service of Summons; Penalty for Failure.*—2 The president of a court-martial shall designate and direct
3 a fit person or persons to summon all delinquents to ap-
4 pear before the court. Service of the summons shall be
5 made by the person so designated in the same manner
6 as service of process in civil cases. The person serving the
7 summons shall receive a fee of one dollar for such serv-
8 ice, together with five cents per mile in necessary travel,
9 and such fee of one dollar together with mileage, shall be
10 taxed as a part of the costs in such proceeding.11 The summons may be directed by the president of the
12 court-martial to the sheriff, or his deputy, or any con-
13 stable, or member of the department of public safety, or
14 to any individual, in the county where such delinquent
15 resides or may be found for service; and it shall be the
16 duty of such person in whose custody the summons has
17 been placed for service forthwith to serve same, if the
18 delinquent be found, and make due return thereof, before
19 the return day of such summons, to the president of the
20 court-martial. The return of service of such summons

21 shall be in form and effect the same as is customarily
22 used by officers in making returns of civil process. Any
23 member of the department of public safety, sheriff, or
24 his deputy, constable or individual who shall refuse, fail
25 or neglect to serve such summons and make his return
26 thereon to the president of the court-martial before the
27 return day thereof, shall be deemed guilty of a misde-
28 meanor, and, on conviction thereof, shall be fined not to
29 exceed fifty dollars.

Sec. 15. *Trial; Judgment; Duties of Sheriff; Penalty.*—

2 On the return day of the summons the court shall hear
3 the evidence and render judgment thereon as the case
4 may be. If, however, on the return day of the summons
5 the accused shall fail to appear, after having been duly
6 served with summons, the court shall proceed to hear the
7 evidence and try the accused in his absence and render
8 judgment thereon as the case may be and the facts war-
9 rant. If such judgment be for a fine and costs solely,
10 the court shall forthwith issue an execution in form and
11 effect as hereafter set forth, and place it in the hands of
12 the sheriff of the county wherein the accused may be
13 found. If, however, the judgment of the court against
14 the accused is for confinement in the county jail, the court
15 shall forthwith issue an order directed to the sheriff of the
16 county, wherein the accused may be found, directing said
17 sheriff to take into custody the body of the accused and
18 confine him in the county jail. Such order so delivered
19 by the court shall be coextensive with the state, and shall
20 be sufficient evidence and authority for the jailer of such
21 county jail to receive the body of such accused and con-
22 fine him therein pursuant to said judgment. No pre-
23 scribed form of order for confinement of the accused shall
24 be required.

25 Any sheriff who fails, neglects or refuses to perform
26 any duty required of him by this section, by reason of
27 any order of confinement directed by any court, shall be
28 guilty of a misdemeanor, and, upon conviction thereof,
29 shall be fined not less than fifty dollars, nor more than
30 one hundred dollars for each offense.

Sec. 16. *Form of Execution.*—Execution for the purpose
2 of either collecting the fine and costs or imprisoning the

3 delinquent for failure to pay the same shall be substan-
4 tially in the following form, blanks being properly filled
5 in:

6 The State of West Virginia:

7 To the Sheriff of _____ County, greetings:

8 Whereas, pursuant to the laws of the State of West Vir-
9 ginia, by an order duly issued by (name and rank of
10 officer ordering court) _____, of the
11 West Virginia National Guard, and dated on the _____ day
12 of _____, 19____, a court was duly
13 appointed, for (state object of court) _____;
14 and,

15 Whereas, the said court was duly and regularly con-
16 vened and from time to time duly adjourned; and,

17 Whereas, (name and rank of accused) _____
18 _____ in (organization) _____ of the West
19 Virginia National Guard, was duly and regularly returned
20 to said court, as required by law, charged with (state
21 whether accused was charged with delinquencies of of-
22 fenses against the military code, without specifying char-
23 acter thereof) as appears by (either summons or charges
24 and specifications, as the case may be) to be duly filed
25 with said court, and was duly summoned and notified to
26 appear before said court; and it satisfactorily appearing
27 to the court that such _____ was and is a _____
28 of the West Virginia National Guard and subject to the
29 jurisdiction of the court; and after due deliberation of the
30 evidence offered by the State and the accused, the court
31 did find and adjudge the said _____
32 (state finding) _____ and did sentence
33 him to pay a fine of _____ dollars, and
34 did also sentence him to pay costs of _____
35 dollars, making a total fine of _____ dollars;
36 and,

37 Whereas, the proceedings, findings and sentences of
38 such court were thereafter duly approved by _____
39 _____, the officer ordering said court.

40 These are therefore in the name of the State of West
41 Virginia to command you to levy and collect said fines,
42 together with your costs, according to law, of the goods
43 and chattels of _____, and in default

44 of sufficient goods and chattels of such.....,
 45 to satisfy the same; then, within five days, to take the
 46 body of such delinquent to the common jail of.....
 47County, and deliver him to the jailer thereof;
 48 and the said jailer is hereby directed and requested to
 49 receive the body of such.....conveyed to
 50 the jail aforesaid, and to keep such.....
 51 closely confined in the manner and during the time re-
 52 quired by law, and until discharged according to law, for
 53 which this shall be his warrant; and of your doings by
 54 virtue thereof to make return to me within forty days
 55 after the execution of these presents.

56 Given under my hand at....., and
 57 State of West Virginia, on the.....day of.....,
 58 19.....

59 (Signed).....
 60 (Rank and organization of presiding officer.)
 61 West Virginia National Guard,
 62 President of the Court.

Sec. 17. *Courts of Inquiry*.—Courts of inquiry shall be
 2 ordered for the same purposes as provided in the manual
 3 for courts-martial, United States army, which are appli-
 4 cable to this state. Such courts of inquiry shall, without de-
 5 lay, report the evidence adduced, a statement of the facts,
 6 and, when required, an opinion thereof, to the appointing
 7 authority.

Sec. 18. *Disorderly Conduct before Military Court; Pen-
 2 alty*.—Any person other than a member of the national
 3 guard who shall resort to disorderly, contemptuous or in-
 4 solent behavior in, or use any insulting or indecorous lan-
 5 guage or expressions to or before, any military court, or
 6 any member of either of such courts, in open court, to in-
 7 terrupt the proceedings or to impair the authority of such
 8 courts, shall be guilty of a misdemeanor and may be ar-
 9 rested by the order of the president of the court, and
 10 at once delivered to the civil authorities; and such person,
 11 if found guilty, shall be fined not less than five nor more
 12 than fifty dollars, or imprisoned in the county jail not ex-
 13 ceeding thirty days, or both fined and imprisoned.

2 Sec. 19. *Record and Approval of Court-Martial Sen-*
3 *tence.*—The record of the proceedings and sentence of ev-
4 ery court-martial shall, without delay, be delivered to the
5 appointing authority, who shall approve or disapprove
6 thereof. A court may proceed with the execution of a sen-
6 tence pending approval by the appointing authority.

2 Sec. 20. *Reconvening Court-Martial.*—A court-martial
3 appointing authority is authorized to direct a court-mar-
4 tial to reconvene, and send back its proceedings for re-
5 vision, and to remit, commute, or investigate any punish-
5 ment awarded by the court.

2 Sec. 21. *Collection and Disposition of Fines.*—All fines
3 under the provisions of this article not collectible by the
4 court may be levied or collected by the sheriff of any
5 county of the state, and shall be transmitted to the adju-
6 tant general of the state, who shall deposit the same to
7 the military fund of the state. Whenever process of law
8 is necessary for collection of fines, the sheriff shall collect
8 in addition thereto his usual fee.

2 Sec. 22. *Execution in Aid of Collection of Fines and*
3 *Penalties.*—For the purpose of collecting any fines or pen-
4 alties imposed by any courts-martial, the president of the
5 court shall issue execution, or executions, for the collec-
6 tion thereof, and deliver the same to the sheriff of any
7 county for levy on the goods and chattels of the delin-
8 quent, and, in addition to such fine, shall collect the neces-
9 sary costs of such proceedings, as provided in civil cases.
10 On failure, within fifteen days from the time of delivery
11 of such execution into his hands, to satisfy such execution
12 from the goods and chattels of the delinquent, the sheriff
13 shall forthwith take the body of the delinquent to the
14 county jail and therein confine him to serve the execution
15 at a space and rate of one day's confinement for each two
16 dollars of fine and the costs: *Provided, however,* That the
17 delinquent may furnish a bond with good and sufficient
18 surety to the sheriff to stay such execution and costs for a
19 period of thirty days, either before confinement or during
20 confinement; and if at the expiration of said thirty days
20 such delinquent fails to pay the execution and costs, the

21 sheriff may apprehend the delinquent and confine him in
22 the county jail, as in the original proceeding; and if the
23 accused be not found, the sureties on such bond shall be
24 liable to the state of West Virginia for the amount of said
25 execution and costs thereof.

26 The sheriff shall be entitled to such commissions and
27 fees as provided in civil cases.

Sec. 23. *Failure of Sheriff to Execute Process or Return*
2 *Fines.*—Any sheriff failing to execute any process, or to
3 make proper return of all fines and penalties collected,
4 shall be guilty of a misdemeanor, and, upon conviction
5 thereof, be fined not less than fifty nor more than one
6 hundred dollars for each offense.

Sec. 24. *Actions against Members of Military Courts.*—
2 No action shall be maintained against any member of a
3 military court, or officer or agent acting under its author-
4 ity, on account of the imposition of a fine or penalty or
5 for the execution of a sentence on any person.

Sec. 25. *Trial by Civil Authorities.*—For any offense
2 enumerated in this article which is also cognizable under
3 civil law, the offender may, in the discretion of his su-
4 perior officer, be delivered over to the civil authorities
5 for such action and disposition as may be warranted.

Article 1-f. Privileges and Prohibitions.

Section

1. Leave of absence for public officials and employees.
2. Suits against officers or persons acting under military authority; security for costs.
3. Change of venue of prosecutions or suits against members of national guard.
4. Exemption from arrest.
5. Unlawful conversion of military property.
6. Unlawful wearing of uniforms; penalty.
7. Unlawful military organizations; penalty.
8. Reemployment rights.
9. General penalty; jurisdiction.

Section 1. *Leave of Absence for Public Officials and Em-*
2 *ployees.*—All officers and employees of the state, or sub-
3 divisions or municipalities thereof, who shall be members
4 of the national guard, shall be entitled to leave of absence
5 from their respective offices or employments without loss
6 of pay, status, or efficiency rating, on the days during

7 which they shall be engaged in drills, parades, or other
8 duty, during business hours ordered by proper authority,
9 or for field training or active service of the state for a
10 maximum period of thirty days in any one calendar year.
11 The term "without loss of pay" shall mean that the officer
12 or employee shall continue to receive his normal salary
13 or compensation, notwithstanding the fact that such offi-
14 cer or employee may have received other compensation
15 from federal or state sources during the same period. Ben-
16 efits of this section shall not accrue to individuals ordered
17 or called to active duty by the president.

Sec. 2. *Suits against Officers or Persons Acting under*
2 *Military Authority; Security for Costs.*—When a suit or
3 proceeding shall be commenced in any court by any per-
4 son, against any military officer of the state, for any act
5 done by such officer in his official capacity in the discharge
6 of any duty under this article, or against any person act-
7 ing under the authority or order of any such officer, or
8 by virtue of any warrant issued by him pursuant to law,
9 the court shall, upon motion of the defendant, when it
10 has been made to appear to the court by affidavit, or other-
11 wise, that the act done is such as hereinbefore set forth,
12 require the person prosecuting or instituting the suit or
13 proceeding to file security for the payment of costs that
14 may be incurred by the defendant therein. This security
15 shall be by bond payable to the state, with surety to be
16 approved by the clerk of the court, in a penalty equal to
17 six times the costs incurred and likely to be incurred by
18 the defendant, but in no case shall such bond be for a pen-
19 alty less than five hundred dollars. The court before whose
20 clerk such bond is given, may, on motion by a defendant,
21 give judgment for so much as he is entitled to by virtue
22 of such bond under the provisions of this section. If such
23 security for costs be not given within sixty days from the
24 time the same is required by the court to be given, the
25 suit or proceeding shall, by order of the court, be dis-
26 missed. In case any suit or proceeding shall be dismissed
27 for failure to give security for costs, then the defendant
28 shall recover three times the amount of the costs incurred
29 by him. In all such cases as are referred to in this section

30 the defendant may make a general denial and give the
31 special matter in evidence.

Sec. 3. *Change of Venue of Prosecutions or Suits against
2 Members of National Guard.*—Any civil or military officer
3 or member of the national guard, or any person lawfully
4 aiding them in the performance of any duty required un-
5 der the provisions of this article, who is indicted or sued
6 for any injury to person or property in endeavoring to
7 perform such duty, shall have the right, and it is hereby
8 made the duty of the court in which such indictment or
9 suit is pending, upon the application of any person so in-
10 dicted or sued, to remove the trial of the indictment or
11 suit to some county free from exception.

Sec. 4. *Exemption from Arrest.*—No person belonging
2 to the military forces of the state, while performing mili-
3 tary duty under proper orders, shall be arrested on civil
4 process, nor shall any person belonging to the military
5 forces of the state, while performing military duty under
6 proper orders, be arrested on criminal process, except
7 upon process from a circuit or criminal court or a judge
8 thereof in vacation.

Sec. 5. *Unlawful Conversion of Military Property.*—
2 Whoever shall secrete, sell or dispose of, or offer for sale,
3 or purchase, knowing the same to be such, retain after
4 proper demand is made, or in any manner pawn or pledge,
5 any military property, which shall have been issued under
6 the provisions of this article, shall be guilty of a misde-
7 meanor, and, in addition to the punishment provided for
8 misdemeanors in this article, shall forfeit to the state
9 twice the amount or cost of the property so secreted, sold,
10 disposed of, offered for sale, or purchased, retained after
11 proper demand has been made, pawned or pledged.

Sec. 6. *Unlawful Wearing of Uniforms; Penalty.*—Any
2 person who shall wear any uniform or any device, strap,
3 knot, or insignia of any design or character, used as a des-
4 ignation of grade, rank or office, such as are by law or
5 regulations, duly promulgated, prescribed for the use of
6 the national guard, or similar thereto, except members
7 of the army or navy of the United States or the national

8 guard of this or any other state, members of associations
9 wholly composed of soldiers honorably discharged from
10 the service of the United States, or the members of the
11 order of sons of veterans, shall be guilty of a misdemeanor,
12 and, on conviction thereof, shall be fined not less than ten
13 nor more than one hundred dollars; and any member of
14 the national guard who shall, when not on duty, wear
15 any such uniform or equipment issued by the state with-
16 out the permission of his commanding officer, shall be
17 subject to a fine of not more than fifty dollars.

Sec. 7. *Unlawful Military Organizations; Penalty.*—It
2 shall be unlawful for any body of men whatever, other
3 than the regularly organized national guard or the troops
4 of the United States, to associate themselves together as
5 a military company or organization in this state: *Pro-*
6 *vided*, That the governor may grant permission to public
7 or private schools of the state to organize themselves
8 into companies of cadets, and may furnish such cadets,
9 under proper restrictions, such obsolete ordnance stores
10 and equipment owned by the state as are not in use by
11 the national guard. Whosoever offends against the pro-
12 visions of this section, or belongs to or parades with any
13 such unauthorized body of men with arms, shall be pun-
14 ished with a fine of not exceeding one hundred dollars
15 or imprisoned for a term not exceeding six months.

Sec. 8. *Reemployment Rights.*—Members of the orga-
2 nized militia in the active service of the state for thirty
3 consecutive days or longer shall be entitled to the same
4 reemployment rights granted to members of the reserve
5 components of the armed forces of the United States by
6 applicable federal law.

Sec. 9. *General Penalty; Jurisdiction.*—A person con-
2 victed of a crime declared by this article to be a misde-
3 meanor shall, unless otherwise provided, be punished by
4 a fine of not more than five hundred dollars, or by im-
5 prisonment in the county jail for not more than one year,
6 or by both. Any circuit, intermediate, criminal court,
7 or justice of the peace shall have jurisdiction over offenses
8 enumerated in this article.

Article 1-g. Service Medals.**Section****11. State service ribbon.**

Section 11. *State Service Ribbon*.—A decoration to be known as the "State Service Ribbon" shall be presented by the adjutant general to all members of the national guard ordered to active service of the state pursuant to article one-d of this chapter. Bronze stars shall be affixed on the ribbon for each occasion upon which the recipient of the ribbon shall be ordered to such duty, and a larger silver star shall be worn in lieu of five bronze stars: *Provided, however,* That a separate distinctive ribbon may be designed and presented for any period of active service of the state involving extraordinary duties for a period of not less than one week's duration. Award of the "State Service Ribbon" shall be made retroactively for all periods of duty in the service of the state subsequent to January one, one thousand nine hundred fifty-six. Design of the "State Service Ribbon" and separate distinctive ribbon for extraordinary periods of service shall be the responsibility of the military board of the state of West Virginia.

CHAPTER 114

(House Bill No. 415—By Mr. Speaker, Mr. Singleton)

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to companies and platoons and how constituted; training of members and other peace officers; and salaries and bonds of members of the department of public safety.

Article 2. Department of Public Safety.**Section**

3. Companies and platoons and how constituted; training of members and other peace officers; salaries and bonds of members.

Be it enacted by the Legislature of West Virginia:

That section 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:

Section 3. *Companies and Platoons and How Constituted; Training of Members and Other Peace Officers; Salaries and Bonds of Members.*—The superintendent shall create, appoint and equip a department of public safety, which shall, in addition to the personnel provided for in section two of this article, consist of four companies or platoons. Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, five sergeants, ten corporals and such number of troopers as the superintendent may decide best, but such number of troopers in any company or platoon shall not at any time be less than twenty-five nor more than sixty-five.

The superintendent shall provide adequate facilities for the training of all members of the department and shall prescribe a basic training course for newly enlisted members. He shall also provide advanced or inservice training from time to time for all members of the department. The superintendent may, in his discretion, hold training classes for other peace officers in the state without cost to such officers, except actual expenses for food, lodging and school supplies.

Members of the department shall receive salaries, as follows:

The inspector shall receive an annual salary of six thousand one hundred twenty dollars; captains shall each receive an annual salary of five thousand three hundred forty dollars; lieutenants shall each receive an annual salary of five thousand forty dollars; the master sergeants and first sergeants shall each receive an annual salary of four thousand six hundred eighty dollars; sergeants shall each receive an annual salary of four thousand five hundred dollars; corporals shall each receive an annual salary of four thousand three hundred eighty dollars; and each newly enlisted trooper shall receive a salary of two hundred seventy-five dollars during the period of his basic training, and upon the satisfactory completion of such

37 training and assignment to active duty each such trooper
38 shall receive, during the remainder of his first year's serv-
39 ice, a salary of three hundred twenty-five dollars monthly.
40 During the second year of his service in the department
41 each trooper shall receive an annual salary of four thou-
42 sand twenty dollars; during the third year of his service
43 each trooper shall receive an annual salary of four thou-
44 sand one hundred forty dollars; and during the fourth and
45 fifth years of his service each trooper shall receive an annu-
46 al salary of four thousand two hundred sixty dollars. Each
47 member of the department entitled thereto by the provi-
48 sions hereof shall receive an increase in salary over that
49 hereinbefore set forth in this section, for grade and rank,
50 based on length of service, including that heretofore and
51 hereafter served, with the department, as follows: For
52 each five-year period of service with the department from
53 the date of first enlistment, each member of the depart-
54 ment shall receive a salary increase of one hundred twen-
55 ty dollars per year to be effective during his next five
56 years of service, which increases shall be successive and
57 cumulative until a total of five such increases shall be re-
58 ceived.

59 In applying the foregoing salary schedule where salary
60 increases are provided for length of service, members of
61 the department in service at the time this article becomes
62 effective shall be given credit for prior service and shall
63 be paid such salaries as the same length of service will
64 entitle them to receive under the provisions hereof.

65 Each member of the department of public safety, ex-
66 cept the superintendent and civilian employees, shall be-
67 fore entering upon the discharge of his duties, execute a
68 bond with security in the sum of three thousand five hun-
69 dred dollars payable to the state of West Virginia, condi-
70 tioned for the faithful performance of his duties as such,
71 and such bond shall be approved as to form by the attor-
72 ney general, and as to sufficiency by the board of public
73 works, and the same shall be filed with the secretary of
74 state and preserved in his office.

CHAPTER 115

(House Bill No. 401—By Mr. White)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen 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 leave time for members of the department of public safety called to active or inactive duty in the national guard or armed forces of the United States.

Article 2. Department of Public Safety.

Section

- 7-a. Leave time for members called to duty in national guard or reserve component of armed forces.
-

Be it enacted by the Legislature of West Virginia:

That article two, chapter fifteen 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:

Section 7-a. *Leave Time for Members Called to Duty in National Guard or Reserve Component of Armed Forces.*—Any member of the department of public safety who is called to perform active duty for training or inactive duty training in the national guard or any reserve component of the armed forces of the United States annually shall be granted upon request leave time not to exceed thirty days for the purpose of performing such active duty for training or inactive duty training, and the time so granted shall not be deducted from any leave accumulated as a member of the department.

CHAPTER 116

(Senate Bill No. 244—By Mr. Carson, Mr. President and Mr. Carrigan)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to creating a West Virginia sheriffs' bureau; providing powers and duties therefor, and providing penalties.

Article 8. West Virginia Sheriffs' Bureau.

Section

1. Creation; purpose; composition.
2. General powers and duties.
3. Executive secretary; clerical and technical personnel.
4. Training of peace officers approved by the bureau.
5. Purchase of equipment and supplies; use of facilities of department of purchases.
6. Standard color for motor vehicles used by sheriff; standard badges and uniforms; wearing other than standard uniform or badge; unauthorized wearing of official uniforms or badges; simulation; penalties.
7. Sheriffs' bureau special fund generally.
8. Payments into sheriffs' bureau fund.
9. Payments from sheriffs' bureau fund.
10. Misuse of the fund; penalties.
11. County courts' contributed to fund.
12. Tax exemption.

Be it enacted by the Legislature of West Virginia:

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

- Section 1. *Creation; Purpose; Composition.*—For the
- 2 purpose of providing better law enforcement for our
 - 3 counties and state and to effectuate better law enforce-
 - 4 ment on our highways, there is hereby created the West
 - 5 Virginia sheriffs' bureau. Said bureau shall be consti-
 - 6 tuted by the governor, as chairman, the attorney general

7 and five sheriffs of the counties of West Virginia, to be
8 selected by the governor, each for a term of two years,
9 commencing July first, one thousand nine hundred sixty-
10 one; except that three of the first five sheriffs designated
11 July first, one thousand nine hundred sixty-one, shall
12 serve terms expiring July first, one thousand nine hun-
13 dred sixty-two, at which time new selections for a regular
14 two-year term shall be made. Any vacancy on the bureau
15 shall be filled for the remainder of the unexpired term by
16 selection of the governor.

Sec. 2. *General Powers and Duties.*—The bureau shall
2 have the power to contract and be contracted with, to
3 recommend cooperative policies for the coordination of
4 the law enforcement work of county agencies and county
5 officials having law enforcement duties, in seeking to
6 promote cooperation between all state and local law
7 officers, in securing efficient and effective law enforce-
8 ment, in eliminating duplication of work, and in pro-
9 moting economy of operation in such agencies through
10 the central purchase of supplies and equipment for all
11 local law enforcement agencies. The bureau is authorized
12 to accept contributions from counties but it shall neither
13 solicit nor accept contributions from persons, firms or
14 corporations.

Sec. 3. *Executive Secretary; Clerical and Technical*
2 *Personnel.*—The bureau shall employ an executive secre-
3 tary, and such other clerical and technical personnel as
4 are required, at salaries to be fixed within available funds
5 by the bureau, to perform such duties as the bureau may
6 prescribe.

Sec. 4. *Training of Peace Officers Approved by the Bu-*
2 *reau.*—The bureau may contract or agree with any state
3 university or college in West Virginia or any other organ-
4 ization for such university, college or other organization
5 to provide training for peace officers, which training shall
6 embrace police techniques in detecting crime, apprehend-
7 ing criminals, securing and preserving evidence. All law
8 enforcement officers selected by the various law enforce-
9 ment agencies, if their selection is approved by the bu-

10 reau, shall receive such training free with the exception
11 of actual cost of housing and meals.

12 The county courts are authorized to pay the necessary
13 travel and living expenses of sheriffs and deputies of their
14 respective counties while receiving training.

Sec. 5. *Purchase of Equipment and Supplies; Use of*
2 *Facilities of Department of Purchases.*—The bureau shall
3 be governed by all laws regulating the purchase of sup-
4 plies and equipment as other state agencies, and may
5 enter into contracts with other state agencies. The bureau
6 may use the facilities of the state department of purchases
7 and avail itself of the benefits of any general contract held
8 by said department for the purchase of any equipment or
9 supplies for state agencies.

10 All equipment purchased through the bureau shall be
11 in the name of the bureau and the bureau is authorized
12 to contract with counties, sheriffs or deputy sheriffs for
13 the return of any supplies or equipment purchased from
14 funds contributed to the fund by each such county, sheriff
15 or deputy sheriff upon request.

Sec. 6. *Standard Color for Motor Vehicles Used by*
2 *Sheriff; Standard Badges and Uniforms; Wearing Other*
3 *Than Standard Uniform or Badge; Unauthorized Wearing*
4 *of Official Uniforms or Badges; Simulation; Penalties.*—

5 (1) The bureau may by proper rules and regulations
6 adopt a standard color for use on the motor vehicles used
7 by the various sheriffs and deputy sheriffs of West Vir-
8 ginia.

9 (2) For purposes of uniformity the bureau may estab-
10 lish a standard badge and uniform to be worn by all
11 sheriffs and deputy sheriffs.

12 (3) On and after the first day of January, one thousand
13 nine hundred sixty-five, it shall be unlawful for any sheriff
14 or deputy sheriff to wear other than the standard uniform
15 and badge as provided by the preceding paragraph, except
16 when engaged in undercover work or other similar duties
17 wherein the identity of the officer should be undisclosed.
18 When so adopted by the bureau it shall be unlawful for
19 any person other than sheriffs and deputy sheriffs to wear
20 an official sheriff's badge or uniform as prescribed by the

21 bureau, or to wear a badge or insignia of such similarity
22 to the official sheriff's badge as to be indistinguishable
23 therefrom at a distance of twenty feet: *Provided*, That
24 nothing herein shall be construed to prevent members of
25 any military, fraternal, or similar organization or any
26 other law enforcement officer from wearing any insignia
27 officially adopted or worn prior to the effective date of
28 this section.

29 (4) Violation of any of the provisions of this section
30 shall be a misdemeanor and subject to a fine of not more
31 than five hundred dollars or imprisonment in the county
32 jail not to exceed six months, or both such fine and im-
33 prisonment.

Sec. 7. *Sheriffs' Bureau Special Fund Generally.*—The
2 West Virginia sheriffs' bureau is authorized, empowered,
3 and directed to establish in the state treasury a special
4 fund to be known as "the West Virginia sheriffs' bureau
5 special fund", hereinafter referred to as "the fund". The
6 fund shall be only for the purpose of purchasing equip-
7 ment and supplies at the request of the various sheriffs'
8 departments of the state of West Virginia, or the counties
9 of the state of West Virginia, and any balance in the fund
10 at the end of any fiscal year shall remain in the fund and
11 shall not expire or revert. Payments shall be made out
12 of the fund upon requisition of the secretary of the
13 bureau by means of a warrant signed by the auditor and
14 treasurer.

Sec. 8. *Payments into Sheriffs' Bureau Fund.*—The
2 fund shall consist of payments made into the fund by any
3 county of the state of West Virginia, by any sheriff or
4 deputy sheriff of any county in the state of West Virginia,
5 for the purchase of equipment or supplies for any county,
6 sheriff or deputy sheriff in the state of West Virginia:
7 *Provided, however*, That when the use of the fund is
8 requested by a county, sheriff or deputy sheriff, satis-
9 factory proof must be supplied to and required by the
10 bureau that such supplies and equipment are to be used
11 primarily for a public purpose.

Sec. 9. *Payments from Sheriffs' Bureau Fund.*—On
2 proper authorization by the secretary of the bureau and

3 under proper rules and regulations of the bureau, pay-
4 ments shall be made from the fund to cover the cost of
5 any supplies or equipment requested by any county,
6 sheriff, or deputy sheriff to be purchased for said county,
7 sheriff or deputy sheriff by the bureau: *Provided, how-*
8 *ever,* That the secretary shall not be authorized to pur-
9 chase or contract for purchase any supplies or equipment
10 for any county, sheriff or deputy sheriff until that county,
11 sheriff or deputy sheriff has a sufficient balance in the
12 fund to fully cover the cost of such purchase.

Sec. 10. *Misuse of the Fund; Penalties.*—It shall be
2 unlawful for any person authorized to purchase through
3 the fund to use any equipment or supplies primarily for
4 his personal use and, upon conviction shall be fined not
5 less than one hundred nor more than five hundred dollars,
6 or imprisoned in the county jail not exceeding one year,
7 or both, in the discretion of the court.

Sec. 11. *County Courts' Contribution to Fund.*—In addi-
2 tion to the provisions of chapter seven, article seven, sec-
3 tion seven of this code, the county court may pay on
4 requisition of the sheriff of the county, at the first of each
5 month, a reasonable amount sufficient to cover the cost
6 of purchase of gasoline necessary to meet the needs of
7 the duties of the sheriff and deputies of the county.

Sec. 12. *Tax Exemption.*—Any supplies or equipment
2 purchased by the bureau through its special fund shall
3 be exempt from any taxes of the state of West Virginia.

C

CHAPTER 117

(House Bill No. 203—By Mr. Speaker, Mr. Singleton, and
Mr. Seibert)

[Passed February 23, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal section five, article six; and to amend and
reenact section two, article one; section five, article five;
and sections four and six, article six, all of chapter twenty-
four-a of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to uniform regulation of public for hire motor vehicles by the public service commission.

Article

1. **Purposes, Definitions and Exemptions.**
5. **Powers and Duties of Commission.**
6. **Duties and Privileges of Motor Carriers Subject to Regulations of the Commission.**

Be it enacted by the Legislature of West Virginia:

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

Article 1. Purposes, Definitions and Exemptions.

Section

2. Definitions.

Section 2. *Definitions.*—When used in this chapter: (a) the term “motor vehicle” means, and includes, any automobile, truck, tractor, truck tractor, trailer, semi-trailer, motor bus, taxicab, any self-propelling motor-driven motor vehicle, or any combination thereof, used upon any public highway in this state for the purpose of transporting persons or property; (b) the term “public highway” means any public street, alley, road, or highway, or thoroughfare of any kind in this state used by the public; (c) the term “commission” means the public service commission of West Virginia; (d) the term “person” means and includes any individual, firm, copartnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee or personal representative thereof; (e) the term “common carrier by motor vehicle” means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or

23 forwarding agencies, and leased or rented motor vehicles,
24 with or without drivers; (f) the term "contract carrier
25 by motor vehicle" means any person not included in sub-
26 section (e) of this section, who under special and indi-
27 vidual contracts or agreements, and whether directly or
28 by lease or any other arrangement, transports passengers
29 or property over the highways in this state by motor
30 vehicles for hire; (g) the term "motor carrier" includes
31 both a common carrier by motor vehicle and a contract
32 carrier by motor vehicle; (h) the term "exempt carrier"
33 means any person operating a motor vehicle exempt from
34 the provisions of this chapter under section three thereof;
35 (i) the term "power unit" means any vehicle which con-
36 tains within itself the engine, motor, or other source of
37 power by which said vehicle is propelled.

Article 5. Powers and Duties of Commission.

Section

5. Further regulatory powers of the commission.

Section 5. *Further Regulatory Powers of the Commis-*
2 *sion.*—The commission shall:

3 (a) Prescribe rules of practice and procedure, the
4 method and manner of holding hearings, and for taking
5 evidence on all matters that may come before it, and
6 enter such orders as may be just and lawful. In the in-
7 vestigations, preparations, and hearings of cases, the com-
8 mission shall not be bound by the technical rules of
9 pleading and evidence, but in that respect it may exer-
10 cise such discretion as will facilitate its efforts to under-
11 stand and learn all the facts bearing upon the right and
12 justness of the matters before it.

13 (b) Appoint such employees as may be necessary to
14 carry out the provisions of this chapter, and shall fix
15 their respective salaries or compensation. Such employees
16 shall hold office during the pleasure of the commission.
17 The commission may designate such employees as it
18 deems necessary to take evidence at any hearing held
19 or required by the provisions of this chapter, which em-
20 ployees are hereby empowered to administer oaths in
21 all parts of the state so far as the exercise of such power
22 is properly incidental to the performance of their duties in
23 connection with the provisions of this chapter.

24 (c) Prescribe a schedule of fees to accompany applica-
25 tions for certificates of convenience and necessity and
26 permits and for the filing and recordation of other papers
27 with the commission. The commission shall likewise pre-
28 scribe a schedule of fees to be charged for the certifica-
29 tion of all records and papers and sums to be paid wit-
30 nesses and other costs necessary and incident to hearings
31 before it or its employees and order the same paid by
32 the unsuccessful party. Sums collected in this manner,
33 except witness fees, shall be paid into the state treasury
34 and be credited to the public service commission motor
35 carrier fund provided for in section six of article six of
36 this chapter. The witness fees shall be paid to the per-
37 sons who are entitled thereto.

38 (d) Establish a system of accounts to be kept by motor
39 carriers or classify motor carriers and establish a system
40 of accounts for each class, and prescribe the manner in
41 which such accounts shall be kept. It may also in its dis-
42 cretion prescribe the form of accounts, records, and mem-
43 oranda to be kept by such motor carriers, including the
44 accounts, records, and memoranda for the movement of
45 traffic as well as the receipts and expenditures of money,
46 and any other forms, records and memoranda which in
47 the judgment of the commission may be necessary to carry
48 out any of the provisions of this chapter.

49 (e) Require persons subject to the provisions of this
50 chapter, to furnish any information which may be in
51 their possession, or obtainable from their accounting or
52 other records, respecting rates, charges, classifications, or
53 practices in conducting their business, and to furnish the
54 commission at all times for inspection any books or papers
55 or reports and statements, which reports and statements
56 shall be under oath, when so required by the commission,
57 and the form of all reports required under this chapter
58 shall be prescribed by the commission.

59 (f) Either as a commission or by any of its members,
60 or by designated employees, subpoena witnesses and take
61 testimony, and administer oaths to any witness in any
62 proceeding or examination instituted before it or con-
63 ducted by it with reference to any matter within its
64 jurisdiction. In all hearings or proceedings before the
65 commission or its designated employees the evidence of

66 witnesses and the production of documentary evidence
67 may be required at any designated place of hearing with-
68 in the state; and in the case of disobedience to a subpoena
69 or other process the commission or any party to the pro-
70 ceedings before the commission may invoke the aid of
71 any circuit court in the state in requiring the evidence
72 and testimony of witnesses and the production of papers,
73 books, and documents. And such court, in case of re-
74 fusals to obey the subpoena issued to any person or to any
75 motor carrier subject to the provisions of this chapter,
76 shall issue an order requiring such motor carrier or any
77 person to appear before the commission or designated em-
78 ployees and produce all books and papers, if so ordered,
79 and give evidence touching the matter in question. Any
80 failure to obey such order of the court may be punished
81 by such court as contempt thereof. A claim that such
82 testimony or evidence may tend to incriminate the per-
83 son giving the same shall not excuse such witness from
84 testifying, but such witness shall not be prosecuted for
85 any offense concerning which he is compelled hereunder
86 to testify.

87 (g) Require common carriers by motor vehicle and
88 contract carriers by motor vehicle subject to the provi-
89 sions of this chapter either to procure insurance from a
90 company authorized to write such insurance in West
91 Virginia, or to qualify as a self-insurer, or to deposit such
92 security, upon such terms and conditions and for such
93 limits of liability as the commission shall determine to be
94 necessary for the reasonable protection of the traveling,
95 shipping, and general public against injury, loss, damage
96 or default for which such carrier may be liable, and pre-
97 scribe rules and regulations governing the filing of evi-
98 dence of such insurance and such security with the com-
99 mission. In fixing the amount of such insurance policy
100 or policies, the qualifications as a self-insurer, or the de-
101 posit of security, the commission shall give due considera-
102 tion to the character and amount of traffic, the value of
103 the property transported, the number of persons affected,
104 and the degree of danger involved in any such motor car-
105 rier operation.

106 (h) Cooperate with the federal government and the
107 interstate commerce commission of the United States or

108 any other commission or organized delegated authority
109 to regulate interstate or foreign commerce by motor ve-
110 hicles, and it shall be its duty so to do, to the end that the
111 transportation of persons and property by motor vehicles
112 in interstate and foreign commerce into and through the
113 state of West Virginia may be regulated and the laws of
114 the United States and of the state of West Virginia en-
115 forced and administered cooperatively in the public in-
116 terest.

117 (i) Make agreements on behalf of the state of West
118 Virginia with any other state or states providing for
119 reciprocal rights, privileges, and courtesies between the
120 licensees or holders of certificates and permits of the said
121 state or states and the state of West Virginia respecting
122 certificates and permits, fees, assessments, and uniform
123 vehicle identification cards, and the transportation of
124 either persons or property into or through the respective
125 state or states and the state of West Virginia, and all
126 existing agreements between a state or states and the state
127 of West Virginia for reciprocal rights, privileges, and
128 courtesies may, provided constitutional and contractual
129 rights are not violated, be declared void by the commis-
130 sion, and new agreements negotiated.

131 (j) Promulgate safety rules and regulations applicable
132 to motor vehicles subject to the provisions of this chapter
133 and promulgate regulations governing the qualifications
134 and maximum hours of service of drivers and chauffeurs
135 of common and contract carriers by motor vehicle of
136 passengers and property subject to the provisions of this
137 chapter, and promulgate any other rules and regulations
138 which the commission may deem proper to carry out the
139 provisions and intent of this chapter.

Article 6. Duties and Privileges of Motor Carriers Subject to Regulations of the Commission.

Section

4. Uniform vehicle identification card.

6. Motor carrier fund; assessment; collection; appropriation.

Section 4. *Uniform Vehicle Identification Card.*—The
2 commission shall prescribe a uniform vehicle identifica-
3 tion card which shall be displayed within the cab of
4 each power unit operated by any motor carrier, showing

5 thereon the description and serial number of the vehicle
6 for which it is issued and the number given to the ve-
7 hicle by the commission, and may contain such other
8 information as may be required by the commission. Such
9 cards shall be issued annually and displayed in each such
10 power unit not later than July first of each year. It shall
11 be unlawful for any motor carrier to operate any power
12 unit within this state unless said identification card is
13 displayed within such vehicle. It shall be unlawful for
14 the motor carrier, his agent, servant, or employee, or
15 any other person to use or display said identification card
16 or other insignia of authority from the commission at any
17 time after the certificate or permit issued to said motor
18 carrier has expired or has been cancelled, suspended, re-
19 voked, or otherwise disposed of.

Sec. 6. *Motor Carrier Fund; Assessment; Collection;*
2 *Appropriation.*—In addition to the license fees, registra-
3 tion fees, or any other taxes required by law to be col-
4 lected from motor carriers subject to this chapter, each
5 such motor carrier shall be subject to, and shall pay to
6 the public service commission, a special annual assessment
7 for the purpose of paying the salaries, compensation, costs
8 and expenses of administering and enforcing this chapter.
9 All proceeds or funds derived from such assessment shall
10 be paid into the state treasury and credited to a special
11 fund designated public service commission motor carrier
12 fund, to be appropriated as provided by law for the pur-
13 poses herein stated. Each member of the commission shall
14 receive a salary of two thousand dollars per annum as
15 compensation for the administration of this chapter in ad-
16 dition to all other salary or compensation otherwise pro-
17 vided by law, to be paid in monthly installments from
18 said fund. The special assessment against each motor
19 carrier shall be apportioned upon the number and ca-
20 pacity of motor vehicles used by said carrier, computed
21 as hereinafter provided.

- 22 (a) For each uniform vehicle identification card \$3.00
23 (b) Upon each power unit of such carriers of
24 property, in accordance with its capacity as rated
25 by its manufacturer, in addition to amount of sub-
26 section (a):

27	Of one ton or less capacity	\$9.00
28	Of over one to one and one-half tons capacity	13.50
29	Of over one and one-half tons to two tons capacity	18.00
30	Of over two tons to three tons capacity	22.50
31	Of over three tons to four tons capacity	27.00
32	Of over four tons to five tons capacity	31.50
33	Of over five tons to six tons capacity	36.00
34	Of over six tons to seven tons capacity	40.50
35	Of over seven tons to eight tons capacity	45.00
36	Of over eight tons to nine tons capacity	49.50
37	Of over nine tons to ten tons capacity	54.00
38	Of over ten tons capacity, \$54.00 plus \$4.50 for each	
39	additional ton of capacity in excess of ten tons.	

40 (c) Upon each trailer and semi-trailer of such carriers
41 of property, in accordance with its capacity as rated by its
42 manufacturer, in an amount of two thirds of the amount
43 provided for vehicles of its capacity in subsection (b) of
44 this section.

45 (d) Upon each power unit of such carriers of passen-
46 gers, in accordance with the seating capacity thereof, in
47 addition to amount in subsection (a):

48	Of ten passengers or less	\$13.50
49	Of eleven to twenty passengers, inclusive	22.50
50	Of twenty-one to thirty passengers, inclusive	31.50
51	Of thirty-one to forty passengers, inclusive	45.00
52	Of over forty passengers	54.00

53 (e) The annual assessment of each motor carrier shall
54 be paid on or before the first day of July of each year.
55 Additional assessments shall be collected upon the placing
56 in use of any additional motor vehicle: *Provided*, That
57 such additional assessments shall be subject to a reduc-
58 tion in the amounts shown in subsections (b), (c), and
59 (d) corresponding to the unexpired quarterly periods of
60 the fiscal year, but shall not in any event be less than
61 one fourth of such amount plus the sum of three dollars
62 provided in subsection (a).

63 (f) Upon payment by any motor carrier of the assess-
64 ment provided for, the public service commission shall
65 advise the department of motor vehicles by notice in writ-
66 ing that such assessment has been paid, whereupon the
67 department of motor vehicles may issue motor vehicle
68 license for the vehicles described in said notice.

69 (g) Prior to the beginning of any fiscal year the public
70 service commission, after taking into consideration any
71 unexpended balance in the motor carrier fund, the prob-
72 able receipts to be received in the ensuing fiscal year, and
73 the probable costs of administering and enforcing the
74 motor carrier act for the ensuing fiscal year, may fix the
75 assessments provided for in this section for the ensuing
76 fiscal year in amounts which, in the commission's judg-
77 ment, will produce sufficient revenue to administer and
78 enforce the motor carrier act for said fiscal year: *Pro-*
79 *vided*, That in no event shall such assessments exceed the
80 amounts set up in this section.

C

CHAPTER 118

(Senate Bill No. 22—By Mr. Carson, Mr. President)

[Passed March 11, 1961; in effect July 1, 1961. 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 ten, relating to a contributing retirement system for persons in the employ of the state and affiliated political subdivisions of the state.

Article 10. West Virginia Public Employees Retirement Act.

Section

1. Short title.
2. Definitions.
3. Retirement system created and established; body corporate.
- 3-a. Liberal construction; retirement plan not a substitute for federal social security.
4. Effective date of system.
5. Board of trustees created; powers and duties generally; composition.
6. Trustees' terms of office.
7. Vacancy on board; how filled.
8. Trustees' compensation.
9. Chairman; executive secretary; treasurer; legal advisor; actuary.
10. Board meetings; quorum; vote; proceedings.
11. Reports required of board.
12. Officer and employee bonds.
13. Actuarial investigations; valuations.
14. Service credit.
15. Military service credit.
16. Political subdivision becomes participating public employer.
17. Retirement system membership.
18. Termination of membership.

19. Membership forms.
20. Voluntary retirement.
21. Deferred retirement.
22. Retirement annuity.
23. Terminal payment.
24. Annuity options.
25. Disability retirement.
26. Re-examination of disability retirants.
27. Nonduty death annuities.
28. Funds of retirement system.
29. Members deposit fund.
30. Refund of accumulated contributions.
31. Employers accumulation fund.
32. State contributions to retirement system.
33. Contributions by other participating public employers.
34. Transfers from employers accumulation fund.
35. Retirement reserve fund.
36. Income fund.
37. Expense fund.
38. Investment of moneys.
39. No trustee shall gain from investments of system.
40. Restricted use of retirement system moneys.
41. Allowance of regular interest.
42. Fiscal year.
43. Pro rata reduction of annuities.
44. Errors.
45. Fraud; penalty.
46. Right to benefits not subject to execution, etc.; assignments prohibited.
47. Tax exemptions.
48. Validity.

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 ten, to read as follows:

Section 1. *Short Title.*—The short title by which this article may be referred to is “West Virginia Public Employees Retirement Act.”

Sec. 2. *Definitions.*—The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

- (1) “State” means the state of West Virginia;
- (2) “Retirement system” or “system” means the West Virginia public employees retirement system created and established by this article;
- (3) “Board of trustees” or “board” means the board of trustees of the West Virginia public employees retirement system;

12 (4) "Political subdivision" means the state of West
13 Virginia, a county, city or town in the state; a school cor-
14 poration or corporate unit; any separate corporation or
15 instrumentality established by one or more counties,
16 cities, or towns, as permitted by law; any corporation or
17 instrumentality supported in most part by counties, cities,
18 or towns; any public corporation charged by law with the
19 performance of a governmental function and whose juris-
20 diction is coextensive with one or more counties, cities or
21 towns;

22 (5) "Participating public employer" means the state
23 of West Virginia, any board, commission, department, in-
24 stitution or spending unit; and any political subdivision
25 in the state which has elected to cover its employees, as
26 defined in this article, under the West Virginia public
27 employees retirement system;

28 (6) "Employee" means any person who serves regu-
29 larly as an officer or employee, full time, on a salary basis,
30 whose tenure is not restricted as to temporary or pro-
31 visional appointment, in the service of, and whose com-
32 pensation is payable in whole or in part by any political
33 subdivision, or an officer or employee whose compensation
34 is calculated on a daily basis and paid monthly or on com-
35 pletion of assignment, including technicians and other
36 personnel employed by the West Virginia national guard
37 whose compensation in whole or in part is paid by the
38 federal government: *Provided*, That members of the state
39 Legislature and members of the legislative body of any
40 political subdivision shall be considered to be em-
41 ployees, anything contained herein to the contrary not-
42 withstanding. In any case of doubt as to who is an em-
43 ployee within the meaning of this article the board of
44 trustees shall decide the question;

45 (7) "Member" means any person who is included in
46 the membership of the retirement system;

47 (8) "Retirant" means any member who retires with an
48 annuity payable by the retirement system;

49 (9) "Beneficiary" means any person, except a retirant,
50 who is entitled to, or will be entitled to, an annuity or
51 other benefit payable by the retirement system;

52 (10) "Service" means personal service rendered to a
53 participating public employer by an employee, as defined
54 in this article, of a participating public employer;

55 (11) "Prior service" means service rendered prior to
56 July one, one thousand nine hundred sixty-one, to the
57 extent credited a member as provided in this article;

58 (12) "Contributing service" means service rendered
59 by a member from and after the date of his entrance in
60 the retirement system, to the extent credited him as pro-
61 vided in this article;

62 (13) "Credited service" means the sum of a member's
63 prior service credit and contributing service credit stand-
64 ing to his credit as provided in this article;

65 (14) "Compensation" means the remuneration paid a
66 member by a participating public employer for personal
67 services rendered by him to the participating public em-
68 ployer. In the event a member's remuneration is not all
69 paid in money, his participating public employer shall fix
70 the value of the portion of his remuneration which is not
71 paid in money;

72 (15) "Final average salary" means the average of the
73 highest annual compensations received by a member dur-
74 ing any period of five consecutive years of his credited
75 service contained within his ten years of credited service
76 immediately preceding the date his employment with a
77 participating public employer last terminated. If he has
78 less than five years of credited service, his final average
79 salary shall be the average of the annual rate of compensa-
80 tions received by him during his total years of credited
81 service;

82 (16) "Accumulated contributions" means the sum of
83 all amounts deducted from the compensations of a mem-
84 ber and credited to his individual account in the members
85 deposit fund, together with regular interest thereon;

86 (17) "Regular interest" means such rate or rates of
87 interest per annum, compounded annually, as the board
88 of trustees shall from time to time adopt;

89 (18) "Annuity" means an annual amount payable by
90 the retirement system throughout the life of a person.

91 All annuities shall be paid in equal monthly installments,
92 using the upper cent for any fraction of a cent;

93 (19) "Annuity reserve" means the present value com-
94 puted upon the basis of such mortality and other tables
95 of experience, and regular interest, as the board of trus-
96 tees shall from time to time adopt;

97 (20) "Retirement" means a member's withdrawal from
98 the employ of a participating public employer with an
99 annuity payable by the retirement system;

100 (21) "Actuarial equivalent" means a benefit of equal
101 value computed upon the basis of such mortality table and
102 regular interest as the board of trustees shall from time
103 to time adopt;

104 (22) The masculine gender shall include the feminine
105 gender, and words of the singular number with respect to
106 persons shall include the plural number, and vice versa.

Sec. 3. Retirement System Created and Established;

2 **Body Corporate.**—The West Virginia public employees re-
3 tirement system is hereby created and established to
4 provide for the orderly retirements of employees, of the
5 state and the other participating public employers, who
6 become superannuated because of age or total and perm-
7 anent disability, and to provide certain survivor benefits.
8 The retirement system shall constitute a body corporate.
9 All business of the system shall be transacted in the name
10 of West Virginia public employees retirement system.

Sec. 3-a. Liberal Construction; Retirement Plan Not a

2 **Substitute for Federal Social Security.**—The provisions of
3 this article shall be liberally construed so as to provide a
4 general retirement system for the employees of the state
5 herein made eligible for such retirement: *Provided, how-*
6 *ever,* That nothing in this article shall be construed as per-
7 mitting any governmental unit, its officers or employees,
8 to substitute the retirement plan herein authorized for
9 federal social security, now in force in West Virginia.

10 The purpose of this article is to provide a state pension
11 plan which supplements the federal social security pen-
12 sion plan now in force and heretofore authorized by law
13 for all officers and employees of the state.

Sec. 4. *Effective Date of System.*—The effective date of the West Virginia public employees retirement system shall be July one, one thousand nine hundred sixty-one: *Provided, however,* That for any participating public employer which cannot make its contribution as provided by this article from its one thousand nine hundred sixty-one—one thousand nine hundred sixty-two current funds, the effective date as to such participating public employer shall be July one, one thousand nine hundred sixty-two.

Sec. 5. *Board of Trustees Created; Powers and Duties Generally; Composition.*—The board of trustees of the West Virginia public employees retirement system is hereby created. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor, are hereby vested in the said board of trustees, except as is otherwise specifically provided in this article. The board shall consist of five trustees, as follows:

- (a) The auditor of the state, by virtue of his office;
- (b) The commissioner of finance and administration, by virtue of his office;
- (c) A resident of the state, who is not a member, retiree, or beneficiary of the retirement system, to be appointed by the governor with confirmation by the senate;
- (d) Two members of the retirement system to be appointed by the governor.

Sec. 6. *Trustees' Terms of Office.*—The first terms of office for the trustees provided for in section five (c) and (d) hereof shall expire June thirty, one thousand nine hundred sixty-five, June thirty, one thousand nine hundred sixty-four, and June thirty, one thousand nine hundred sixty-three, respectively, as the governor shall designate at the time of the appointments. Thereafter, the terms of office for the said trustees shall be five years. Each trustee shall serve as trustee until his successor is appointed and has qualified. In order to make the preliminary arrangements for the operation of the retirement system as of its effective date, the governor shall make

13 the appointments provided for in section five hereof as
14 soon as practicable after the passage of this article.

Sec. 7. *Vacancy on Board; How Filled.*—In the event
2 any trustee, provided for in section five (c) and (d) here-
3 of, leaves the employ of a participating public employer,
4 or fails to attend three consecutive meetings of the board
5 of trustees, unless in each case excused for cause by the
6 remaining trustees attending such meeting or meetings,
7 he shall be considered to have resigned from the board
8 and the board shall, by resolution, declare his office of
9 trustee vacated. If a vacancy occurs in the office of such
10 trustee, the governor shall, within thirty days from and
11 after the date of the vacancy, fill the vacancy, by appoint-
12 ment, for the unexpired term.

Sec. 8. *Trustees' Compensation.*—The trustees shall
2 serve as trustees without compensation for their services
3 as such: *Provided*, That each trustee shall be reimbursed,
4 upon approval of the board of trustees, for any necessary
5 expenses incurred by him in carrying out his duties of
6 trustee. No trustee shall suffer any loss of salary or wages
7 on account of his service as trustee.

Sec. 9. *Chairman; Executive Secretary; Treasurer; Le-
2 gal Advisor; Actuary.*—(a) The board of trustees shall
3 elect from its own number a chairman and a vice chair-
4 man.

5 (b) The board of trustees shall appoint an executive
6 secretary of the retirement system. The executive secre-
7 tary shall be the chief administrative officer of the system;
8 and he shall not be a member of the board. He shall per-
9 form such duties as are required of him in this article and
10 as the board shall from time to time delegate to him. The
11 compensation of the executive secretary shall be fixed by
12 the board subject to the approval of the board of public
13 works. He shall, with the approval of the board of trus-
14 tees, employ such administrative, technical, and clerical
15 employees as shall be required in the proper operation of
16 the system.

17 (c) The state treasurer shall be treasurer of the retire-
18 ment system and the custodian of its funds. All bonds

19 and other investments purchased according to the pro-
20 visions of this article shall forthwith be deposited with
21 the state treasurer. It shall be his duty to collect the prin-
22 cipal thereof and the interest and dividends thereon as
23 the same become due and payable, and when so collected
24 deposit same to the credit of the retirement system. All
25 disbursements from the funds of the system shall be made
26 by the state treasurer only upon written certification duly
27 authorized by a continuing or specific resolution adopted
28 by the board of trustees. He shall furnish the board with a
29 statement of the retirement system securities in his safe-
30 keeping as the board shall from time to time request.

31 (d) The attorney general shall be the legal advisor to
32 the board of trustees.

33 (e) The board of trustees shall appoint an actuary who
34 shall be the technical advisor to the board regarding the
35 operation of the retirement system on an actuarial basis.

Sec. 10. *Board Meetings; Quorum; Vote; Proceedings.*—

2 The board of trustees shall hold a meeting at least once
3 each three months, and shall designate the time and place
4 thereof. Three trustees shall constitute a quorum at any
5 meeting of the board. Each trustee shall be entitled to one
6 vote on each question before the board and at least three
7 concurring votes shall be required for a decision by the
8 board at any of its meetings. The board shall adopt its
9 own rules of procedure and shall keep a record of its pro-
10 ceedings. All meetings of the board shall be public.

Sec. 11. *Reports Required of Board.*—The board of
2 trustees shall submit to the governor for transmittal to
3 the Legislature, on or before the first day of December in
4 each year, a report showing the fiscal affairs and transac-
5 tions of the retirement system for the preceding fiscal
6 year. The said report shall contain, but shall not be lim-
7 ited to, a financial balance sheet, a statement of income
8 and disbursements, an actuarial balance sheet prepared
9 by means of the last actuarial valuation of the system, a
10 detailed statement of investments acquired and disposed
11 of during the said fiscal year, and such other data as shall
12 be deemed necessary for a proper understanding of the

13 condition of the system. The board shall annually furnish
14 the members and the participating public employers with
15 a summary of the results of the operations of the system.

Sec. 12. *Officer and Employee Bonds.*—The state treasurer shall give a separate and additional bond in such amount as shall from time to time be fixed by the board of trustees. The said bond shall be approved by the attorney general and shall be conditioned for the faithful performance of his duties as custodian of the moneys, securities and other investments of the retirement system. The executive secretary, and the employees of the system designated by the board, shall furnish bonds in such form, and in such amounts, as the board shall from time to time determine. The costs of such bonds shall be paid from the expense fund and such bonds shall be filed in the same office as are the bonds of state officers.

Sec. 13. *Actuarial Investigations; Valuations.*—(a) The board of trustees shall keep, or cause to be kept, such data as shall be necessary for the preparation of mortality, service, and retirement tables, and for the compilation of such other data as shall be required for an actuarial valuation of the assets and liabilities of the retirement system.

(b) Beginning in one thousand nine hundred sixty-six, and in each five-year period thereafter, the actuary shall make actuarial investigations into the experiences of the members, retirants and beneficiaries of the retirement system. Based upon such investigations the board of trustees shall adopt for the system rates of mortality, withdrawal from service, superannuation retirement and disability retirement, and salary scales for final average salary.

(c) Beginning in one thousand nine hundred sixty-two, and at least once in each three-year period thereafter, the actuary shall make an actuarial valuation of the assets and liabilities of the retirement system: *Provided*, That until the first actuarial investigations are made, the valuations shall be based upon decrement assumptions which are, in the opinion of the actuary, applicable to the members, retirants and beneficiaries of the system.

25 (d) Beginning in one thousand nine hundred sixty-
26 two, the actuary shall annually compute the annuity re-
27 serve liabilities for annuities being paid retirants and
28 beneficiaries.

Sec. 14. *Service Credit*.—The board of trustees shall
2 credit each member with the prior service and contri-
3 buting service to which he is entitled based upon such
4 rules and regulations as the board of trustees shall from
5 time to time adopt: *Provided*, That in no case shall less
6 than ten days of service rendered by a member in any
7 calendar month be credited as a month of service; nor
8 shall less than ten months of service rendered in any
9 calendar year be credited as a year of service; nor shall
10 more than one year of service be credited any member for
11 all service rendered by him in any calendar year; nor shall
12 any member who was not in the employ of a political
13 subdivision within a period of five years immediately
14 preceding the date the political subdivision became a par-
15 ticipating public employer be credited with prior service.

Sec. 15. *Military Service Credit*.—In the event a mem-
2 ber, who, while employed by a participating public em-
3 ployer, entered or enters the armed forces of the United
4 States during any period of compulsory military service
5 and reenters the employ of a participating public em-
6 ployer, such armed service rendered by him, not to exceed
7 five years, shall be credited to him: *Provided*, That (1)
8 his reemployment by a participating public employer
9 occurs within a period of six months from and after the
10 date of termination of such armed service actually re-
11 quired of him, and (2) he pays to the members deposit
12 fund the amount he may have withdrawn therefrom, to-
13 gether with regular interest from the date of withdrawal
14 to the date of repayment. In any case of doubt as to the
15 period of service to be so credited a member, the board
16 of trustees shall have final power to determine such
17 period. During the period of such armed service and
18 until his return to the employ of a participating public
19 employer his contributions to the retirement system shall
20 be suspended and any balance remaining to his credit in

21 the members deposit fund shall be accumulated at regular
22 interest.

Sec. 16. *Political Subdivision Becomes Participating Public Employer.*—The state of West Virginia shall become a participating public employer effective July one, one thousand nine hundred sixty-one. Any other political subdivision may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its employees in the membership of the retirement system. It shall be the duty of the clerk or secretary of each such political subdivision electing to become a participating public employer to certify the determination of the political subdivision to the board of trustees within ten days from and after the vote of the governing body or the canvass of votes upon such action.

Sec. 17. *Retirement System Membership.*—The membership of the retirement system shall consist of the following persons:

(a) All employees, as defined in section two hereof, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the said participating public employer on or after the said date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after the said date shall thereupon become members of the system; except as provided in paragraphs (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers' retirement system, the judges' retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the West Virginia department of employment security, by the director of such department, may elect whether its employees will accept coverage under this article or be covered under authorization of a separate enactment: *Provided*, That such exclusions of membership shall not apply

25 to any member of the state Legislature, or to any member
26 of the legislative body of any political subdivision.

27 (c) Any member of the state Legislature, or any mem-
28 ber of the legislative body of any other political sub-
29 division may exempt himself from membership in the
30 retirement system by filing his written notice with the
31 board of trustees of his desire to be so exempted: *Pro-*
32 *vided*, That such written notice shall be filed prior to July
33 one, one thousand nine hundred sixty-two, if he was a
34 member of such legislative body June thirty, one thou-
35 sand nine hundred sixty-one; or prior to the expiration of
36 a period of one year from and after the date he assumes
37 such legislative office, if he was not a member of such
38 legislative body June thirty, one thousand nine hundred
39 sixty-one.

40 (d) Should any question arise regarding the member-
41 ship status of any employee, the board of trustees has the
42 final power to decide the question.

Sec. 18. *Termination of Membership.*—In the event a
2 member leaves the employ of a participating public em-
3 ployer, except to become a retirant or his death, he shall
4 thereupon cease to be a member and his credited service
5 at that time shall be forfeited by him. If he becomes re-
6 employed by a participating public employer he shall
7 again become a member of the retirement system. Should
8 his said reemployment occur within a period of five years
9 from and after the date he last left the employ of a par-
10 ticipating public employer his credited service last for-
11 feited by him shall be restored to his credit: *Provided*,
12 That he returns to the members deposit fund the amount,
13 if any, he withdrew therefrom, together with regular in-
14 terest thereon from the date of withdrawal to the date of
15 repayment. Upon a member's retirement or death he shall
16 thereupon cease to be a member.

Sec. 19. *Membership Forms.*—Each participating public
2 employer shall file with the board of trustees, in such
3 form as the board shall from time to time prescribe, a
4 detailed statement of all service rendered to participating
5 public employers by each of its employees, and such other

6 information as the board shall require in the operation of
7 the retirement system.

Sec. 20. *Voluntary Retirement.*—Any member who has
2 attained or attains age sixty years and has ten or more
3 years of credited service in force may retire upon his
4 written application filed with the board of trustees setting
5 forth at what time, not less than thirty days nor more
6 than ninety days subsequent to the execution and filing
7 thereof he desires to be retired. Upon his retirement he
8 shall receive an annuity provided for in section twenty-
9 two hereof.

Sec. 21. *Deferred Retirement.*—If any member, who has
2 twenty or more years of credited service in force, of which
3 at least five years are contributing service, leave the em-
4 ploy of a participating public employer prior to his attain-
5 ment of age sixty years, for any reason except his dis-
6 ability retirement or death, he shall be entitled to an
7 annuity computed according to section twenty-two hereof,
8 as the said section was in force as of the date of his said
9 separation from the employ of a participating public em-
10 ployer: *Provided*, That he does not withdraw his accumu-
11 lated contributions from the members deposit fund. His
12 said annuity shall begin the first day of the calendar
13 month next following the month in which his application
14 for same is filed with the board of trustees on or after his
15 attainment of age sixty-five years.

Sec. 22. *Retirement Annuity.*—Upon a member's retire-
2 ment, as provided in this article, he shall receive a straight
3 life annuity equal to one per cent of his final average
4 salary multiplied by the number of years, and fraction of
5 a year, of his credited service in force at the time of his
6 retirement. Upon his retirement he shall have the right
7 to elect an option provided for in section twenty-four
8 hereof.

Sec. 23. *Terminal Payment.*—In the event a retirant
2 dies before he has received in straight life annuity pay-
3 ments an aggregate amount equal to his accumulated con-
4 tributions standing to his credit in the members deposit
5 fund at the time of his retirement, the difference between

6 his said accumulated contributions and the said aggregate
7 amount of straight life annuity payments received by him
8 shall be paid to such person or persons as he shall have
9 nominated by written designation duly executed and filed
10 with the board of trustees. If there be no such designated
11 person or persons surviving the said retirant such differ-
12 ence, if any, shall be paid to his estate. In no case shall any
13 benefits be paid under this section on account of the
14 death of a retirant if he was receiving an annuity under
15 option A or B provided for in section twenty-four
16 hereof.

Sec. 24. *Annuity Options.*—Prior to the effective date
2 of his retirement, but not thereafter, a member may elect
3 to receive his annuity as a straight life annuity payable
4 throughout his life, or he may elect to receive the ac-
5 tuarial equivalent, at that time, of his straight life an-
6 nuity in a reduced annuity payable throughout his life,
7 and nominate a beneficiary, in accordance with option A
8 or B set forth below:

9 Option A—*Joint and Survivor Annuity.*—Upon the
10 death of a retirant, who elected option A, his reduced an-
11 nuity shall be continued throughout the life of and paid
12 to such person, having an insurable interest in his life, as
13 he shall have nominated by written designation duly exe-
14 cuted and filed with the board of trustees prior to the
15 effective date of his retirement; or

16 Option B—*Modified Joint and Survivor Annuity.*—Upon
17 the death of a retirant who elected option B, one half of
18 his reduced annuity shall be continued throughout the life
19 of and paid to such person, having an insurable interest in
20 his life, as he shall have nominated by written designation
21 duly executed and filed with the board of trustees prior
22 to the effective date of his retirement.

Sec. 25. *Disability Retirement.*—(a) Upon the applica-
2 tion of a member, or his employing authority, a member
3 who (1) is in the employ of a participating public em-
4 ployer, (2) has ten or more years of credited service, and
5 (3) becomes totally and permanently incapacitated for
6 duty in the employ of a participating public employer, by

7 reason of a personal injury or disease, may be retired by
8 the board of trustees: *Provided*, That after a medical ex-
9 amination of the said member, made by or under the di-
10 rection of a medical committee consisting of three physi-
11 cians, one of whom shall be named by the board, one by
12 the said member, and the third by the first two physicians
13 so named, the said medical committee reports, in writing,
14 to the board that (1) the said member is physically or
15 mentally totally incapacitated for duty in the employ of a
16 participating public employer, (2) that such incapacity
17 will probably be permanent, and (3) that the said mem-
18 ber should be retired.

19 (b) A member with less than ten years of credited
20 service shall have the service requirement provided for in
21 paragraph (a) above waived in the event (1) the board
22 of trustees finds his total and permanent disability to be
23 the natural and proximate result of a personal injury or
24 disease arising out of and in the course of his actual per-
25 formance of duty in the employ of a participating public
26 employer, and (2) he is in receipt of workmen's compen-
27 sation on account of such physical or mental disability.

28 (c) Upon a member's retirement, as provided in this
29 section, he shall receive a straight life annuity computed
30 according to section twenty-two hereof and he shall have
31 the right to elect an option provided for in section twenty-
32 four hereof: *Provided*, That his straight life annuity pay-
33 able to his attainment of age sixty-five years shall not be
34 less than twenty-five per cent of his final average salary;
35 and his said straight life annuity payable from and after
36 his attainment of age sixty-five years shall not be less
37 than ten per cent of his final average salary: *Provided*
38 *further*, That his said annuity shall be subject to section
39 twenty-six hereof.

Sec. 26. *Re-examination of Disability Retirants.*—(a)

2 At least once each year during the first five years follow-
3 ing the retirement of a member on account of disability,
4 as provided in section twenty-five hereof, and at least once
5 in each three-year period thereafter, the board of trustees
6 may, and upon the retirant's application shall, require a
7 disability retirant, who has not attained age sixty years, to

8 undergo a medical examination to be made by or under
9 the direction of a physician designated by the board.
10 Should the said retirant refuse to submit to such medical
11 examination in any such period his disability annuity
12 may be discontinued by the board until his withdrawal
13 of such refusal. Should such refusal continue for one year
14 all his rights in and to his annuity may be revoked by the
15 board. If upon such medical examination of a disability
16 retirant, the said physician reports to the board that the
17 retirant is physically able and capable of resuming em-
18 ployment with a participating public employer he shall
19 be returned to the employ of the participating public em-
20 ployer from whose employment he retired and his dis-
21 ability annuity shall terminate: *Provided*, That the report
22 of the said physician is concurred in by the board.

23 (b) A disability retirant who is returned to the employ
24 of a participating public employer shall again become a
25 member of the retirement system and his credited service
26 in force at the time of his retirement shall be restored to
27 his credit.

28 (c) If a disability retirant, who has not attained age
29 sixty years, becomes engaged in a gainful occupation,
30 business or employment, and the sum of his earnings
31 from such occupation, business or employment, and his
32 disability annuity exceeds his annual rate of compensa-
33 tion at the time of his retirement, his disability annuity
34 shall be reduced to an amount which when added to the
35 amount so earned by him shall equal his said annual rate
36 of compensation. If his earnings are later changed, his
37 disability annuity shall be correspondingly adjusted.

Sec. 27. *Non-duty Death Annuities.*—(a) Any member
2 who continues in the employ of a participating public
3 employer on or after the date he either (1) acquires twen-
4 ty-five years of credited service, or (2) attains age sixty
5 years and has ten or more years of credited service, may
6 at any time prior to the effective date of his retirement,
7 by written declaration duly executed and filed with the
8 board of trustees, in the same manner as if he were then
9 retiring from the employ of a participating public em-
10 ployer, elect option A provided for in section twenty-four

11 hereof, and nominate a beneficiary whom the board finds
12 to have been dependent upon the said member for at least
13 fifty per cent of his financial support. Prior to the effective
14 date of his retirement a member may revoke his said
15 election of option A and nomination of beneficiary and he
16 may again prior to his retirement elect the said option A
17 and nominate a beneficiary as provided in this subsection.
18 Upon the death of a member who has an option A elec-
19 tion in force, his beneficiary, if living, shall immediately
20 receive an annuity computed in the same manner in all
21 respects as if the said member had retired the day pre-
22 ceding the date of his death, notwithstanding that he
23 might not have attained age sixty years, and elected the
24 said option A. If at the time of his retirement a member
25 has an option A election in force, his said election of option
26 A and nomination of beneficiary shall thereafter con-
27 tinue in force.

28 (b) Any member who continues in the employ of a
29 participating public employer on or after the date he
30 either acquires twenty-five years of credited service, or
31 attains age sixty years and has ten or more years of cred-
32 ited service, and does not have an option A election in
33 force as provided in subsection (a) of this section, and (1)
34 dies while in the employ of a participating public em-
35 ployer, and (2) leaves a widow, or, in the case of a female
36 member, leaves a widower whom the board of trustees
37 finds to be totally and permanently disabled and to have
38 been dependent upon the said female member for at least
39 fifty per cent of his financial support, the said widow or
40 widower, as the case may be, shall immediately receive
41 an annuity computed in the same manner in all respects
42 as if the said member had (1) retired the day preceding
43 the date of his death, notwithstanding that he might not
44 have attained age sixty years, (2) elected option A pro-
45 vided for in section twenty-four hereof, and (3) nominated
46 his said widow or widower, as the case may be, as bene-
47 ficiary.

Sec. 28. *Funds of Retirement System.*—For financing
2 and accounting purposes the West Virginia public em-
3 ployees retirement system shall consist of two divisions.

4 namely, the state division for the participation of state
5 employees, and the public employer division for the par-
6 ticipation of the public employees who are not state em-
7 ployees. Separate accounting of the retirement system
8 transactions shall be maintained for each division showing
9 the equities of each division in the assets of the system.
10 The retirement system funds shall be (1) the members
11 deposit fund, (2) the employers accumulation fund, (3)
12 the retirement reserve fund, (4) the income fund, and
13 (5) the expense fund. Each such fund shall be main-
14 tained by the board of trustees for the state division and
15 the public employer division, respectively. Nothing con-
16 tained in this section shall be interpreted to mean that
17 the assets of the system are to be segregated between the
18 division or the funds.

Sec. 29. *Members Deposit Fund.*—(a) The members de-
2 posit fund is hereby created. It shall be the fund in which
3 shall be accumulated, at regular interest, the contribu-
4 tions deducted from the compensations of members, and
5 from which refunds of accumulated contributions shall
6 be paid and transfers made as provided in this section.

7 (b) The contributions of a member to the retirement
8 system shall be three and five-tenths per cent of his an-
9 nual compensations. The said contributions shall be made
10 notwithstanding that the minimum salary or wages pro-
11 vided by law for any member shall be thereby changed.
12 Each member shall be deemed to consent and agree to the
13 deductions made and provided for herein. Payment of a
14 member's compensation less said deductions shall be a
15 full and complete discharge and acquittance of all claims
16 and demands whatsoever for services rendered by him to
17 a participating public employer, except as to benefits pro-
18 vided by this article.

19 (c) The officer or officers responsible for making up the
20 pay rolls for payroll units of the state government and for
21 each of the other participating public employers shall
22 cause the contributions, provided for in paragraph (b)
23 above, to be deducted from the compensations of each
24 member in the employ of the participating public em-
25 ployer, on each and every payroll, for each and every pay-

26 roll period, from the date the member enters the retire-
27 ment system to the date his membership terminates.
28 When deducted, each of said amounts shall be paid by the
29 participating public employer to the retirement system;
30 said payments to be made in such manner and form, and
31 in such frequency, and shall be accompanied by such sup-
32 porting data, as the board of trustees shall from time to
33 time prescribe. When paid to the retirement system each
34 of said amounts shall be credited to the members deposit
35 fund account of the member from whose compensations
36 said contributions were deducted.

37 (d) In addition to the contributions deducted from the
38 compensations of a member, as heretofore provided, a
39 member shall deposit in the members deposit fund, by a
40 single contribution or by an increased rate of contribution
41 as approved by the board of trustees, the amounts he may
42 have withdrawn therefrom and not repaid thereto, to-
43 gether with regular interest from the date of withdrawal
44 to the date of repayment. In no case shall a member be
45 given credit for service rendered prior to the date he
46 withdrew his contributions or accumulated contributions,
47 as the case may be, until he returns to the members de-
48 posit fund all amounts due the said fund by him.

49 (e) Upon the retirement of a member, or if a survivor
50 annuity becomes payable on account of his death, in
51 either event his accumulated contributions standing to
52 his credit in the members deposit fund shall be trans-
53 ferred to the retirement reserve fund.

54 (f) In the event an employee's membership in the re-
55 tirement system terminates and no annuity becomes or
56 will become payable on his account, any accumulated con-
57 tributions standing to his credit in the members deposit
58 fund, unclaimed by the said employee, or his legal repre-
59 sentative, within three years from and after the date his
60 membership terminated, shall be transferred to the in-
61 come fund.

Sec. 30. *Refund of Accumulated Contributions.*—(a) In
2 the event a member leaves the employ of a participating
3 public employer prior to the date he becomes entitled to
4 retire with an annuity payable by the retirement system

5 he shall be paid, upon his written application filed with
6 the board of trustees, his accumulated contributions
7 standing to his credit in the members deposit fund, if his
8 separation from the employ of a participating public em-
9 ployer occurs within a period of five years from and after
10 the date he last became a member of the system. If his
11 said separation from the employ of a participating public
12 employer occurs within a period of five years from and
13 after the date he last became a member of the system, he
14 shall be paid his accumulated contributions standing to
15 his credit in the members deposit fund less the total in-
16 terest credited to his individual account therein; and the
17 said total interest credit shall be transferred to the income
18 fund.

19 (b) In the event a member dies and does not leave a
20 beneficiary entitled to an annuity payable by the retire-
21 ment system, his accumulated contributions standing to
22 his credit in the members deposit fund at the time of his
23 death shall be paid to such person or persons as he shall
24 have nominated by written designation duly executed
25 and filed with the board of trustees. If there be no such
26 designated person or persons surviving the said member,
27 his said accumulated contributions shall be paid to his
28 estate.

29 (c) Refunds of a member's contributions or accumu-
30 lated contributions, as the case may be, may be made in
31 equal installments according to such rules and regula-
32 tions as the board of trustees may from time to time
33 adopt.

Sec. 31. *Employers Accumulation Fund.*—The employ-
2 ers accumulation fund is hereby created. It shall be the
3 fund in which shall be accumulated the contributions
4 made by the participating public employers to the re-
5 tirement system, and from which transfers shall be made
6 as provided in this section.

7 (b) Based upon the provisions of section thirteen of
8 this article, the participating public employers' contribu-
9 tions to the retirement system shall be determined, ac-
10 cording to paragraphs (1), (2), (3) and (4) below, for

11 the state as the state division, and for the other partici-
12 pating public employers as the public employer division.

13 (1) The participating public employers' contributions
14 for members' current service shall be a per cent of the
15 members' annual compensation which will equal an
16 amount which if paid annually by the participating public
17 employers during the members' future service will be
18 sufficient to provide, at the time annuities will become
19 payable on their account, the difference between the an-
20 nuity reserves for the future service portions of the an-
21 nuities to be paid and the present value of the members'
22 future net contributions.

23 (2) The participating public employers' contributions
24 for members' accrued service shall be a per cent of the
25 members' annual compensation which will equal an
26 amount which if paid annually by the participating public
27 employers over a period of years, to be determined by the
28 board of trustees, will amortize, at regular interest, the
29 unfunded annuity reserves for the accrued portions of
30 the annuities to be paid on account of members.

31 (3) The participating public employers' contributions
32 for annuities being paid retirants and beneficiaries shall
33 be a per cent of the members' annual compensations which
34 will equal an amount which if paid annually by the par-
35 ticipating public employers over a period of years, to be
36 determined by the board of trustees, will amortize, at
37 regular interest, the unfounded annuity reserves for annu-
38 ities being paid retirants and beneficiaries.

39 (4) In no year shall the total of the contributions, pro-
40 vided for in paragraphs (1), (2) and (3) above, to be paid
41 by any participating public employer exceed five per cent
42 of the total payroll for the members in the employ of such
43 participating public employer for the preceding fiscal
44 year.

Sec. 32. State Contributions to Retirement System.—

2 (a) At least thirty days prior to each regular session of
3 the Legislature, the board of trustees shall certify to the
4 governor the contributions, determined according to sec-
5 tion thirty-one hereof, to be made by the state to the re-
6 tirement system for the next following fiscal year; the

7 said contributions to be based upon the state's total pay-
8 roll for the preceding twelve calendar months. The
9 amounts so ascertained shall be included in the appropri-
10 ation bill to be submitted to the Legislature. In the event
11 the state's contributions for the fiscal year are less than
12 they would have been based upon the state's actual pay-
13 roll for the fiscal year, the amount of the insufficiency
14 shall be included in the appropriation bill for the next
15 following fiscal year. The said contributions shall be paid
16 to the retirement system quarterly and when paid shall
17 be credited to the employers accumulation fund.

18 (b) In the case of any member whose compensation is
19 paid out of moneys derived in whole or in part out of any
20 special fund, or from any source other than the state, then
21 contributions on behalf of such member in any year shall
22 be paid out of such special fund or by such other source
23 in proportion to that part of the member's compensation
24 derived therefrom for that year. The governing body of
25 each participating public employer is hereby authorized
26 to make such contributions from funds of the partici-
27 pating public employer as shall be necessary to pay its
28 proportionate share of contributions on account of each
29 state employee whose compensation is paid by such par-
30 ticipating public employer.

Sec. 33. *Contributions by Other Participating Public*
2 *Employers.*—(a) The board of trustees shall annually
3 certify to each participating public employer, other than
4 the state, the employer contribution rate, determined in
5 section thirty-one hereof, for the public employer division.
6 Each participating public employer shall pay to the state
7 treasurer, for credit to the retirement system, the contri-
8 butions equal to the said contribution rate applied to each
9 and every payroll of the participating public employer.
10 The said payments shall be made in such manner and
11 form, and in such frequency, and shall be accompanied by
12 such supporting data, as the board shall from time to time
13 prescribe. When paid, the said contributions shall be cred-
14 ited to the employers accumulation fund.

15 (b) If any participating public employer, other than
16 the state, fails to make any payment due the retirement

17 system for a period of sixty days after the payment is
18 due, the participating public employer shall become de-
19 linquent, and such delinquency shall be certified to the
20 state auditor by the board of trustees. If any participating
21 public employer becomes delinquent, as provided herein,
22 the state auditor is authorized and directed to withhold
23 any money due such participating public employer by
24 the state until such delinquency, together with regular
25 interest thereon, from the date due, is satisfied. Such
26 money so withheld by the state auditor shall be paid to
27 the retirement system and credited to the employers ac-
28 cumulation fund.

Sec. 34. *Transfers from Employers Accumulation Fund.*

2 —Upon the retirement of a member, or if an annuity be-
3 comes payable on account of the death of a member, the
4 difference between the annuity reserve and the member's
5 accumulated contributions standing to his credit in the
6 members deposit fund at the time of his retirement or
7 death, as the case may be, shall be transferred to the re-
8 tirement reserve fund.

Sec. 35. *Retirement Reserve Fund.*—The retirement
2 reserve fund is hereby created. It shall be the fund from
3 which shall be paid all annuities payable as provided in
4 this article. If a disability retirant returns to the employ-
5 of a participating public employer, his annuity reserve at
6 that time shall be transferred from the retirement reserve
7 fund to the members deposit fund and the employers
8 accumulation fund in the same proportions as the annuity
9 reserve was originally transferred to the retirement re-
10 serve fund. The amount so transferred to the members
11 deposit fund shall be credited to his individual account
12 therein.

Sec. 36. *Income Fund.*—The income fund is hereby
2 created. It shall be the fund to which shall be credited
3 all interest, dividends and other income from invest-
4 ments of the retirement system, all transfers from the
5 members deposit fund by reason of lack of claimant or
6 forfeiture of interest credits, and all other moneys re-
7 ceived by the retirement system, the disposition of which
8 is not specifically provided for in this article. The board

9 of trustees may accept gifts and bequests and same shall
10 be credited to the income fund. There shall be paid or
11 transferred from the income fund all amounts required
12 to credit regular interest to the members deposit fund,
13 employers accumulation fund, and the retirement reserve
14 fund, as provided in this article. Whenever the board
15 determines that the balance in the income fund is more
16 than sufficient to cover the current charges to the fund,
17 the board may, by resolution, provide for contingency
18 reserves, or for the transfer of such excess, or portions
19 thereof, to cover the needs of the other funds of the re-
20 tirement system.

Sec. 37. *Expense Fund.*—The expense fund shall be the
2 fund from which shall be paid the expenses incurred in
3 the administration of the retirement system. The cost of
4 administering the system shall be paid by the state and
5 the other participating public employers on a proportion-
6 ate basis to be determined by the board of trustees. The
7 board shall annually certify to the governor the state's
8 proportionate share of the cost of administration and to
9 each of the other participating public employers their
10 respective shares, and each of said participating public
11 employers shall pay the amounts due by them to the state
12 treasurer for credit to the expense fund.

Sec. 38. *Investment of Moneys.*—All moneys of the re-
2 tirement system not currently required for the payment
3 of annuities or other benefits shall be invested by the
4 board of public works in any securities or investments in
5 which the sinking funds of the state may be legally in-
6 vested, or in any securities or investments in which the
7 deposits in savings banks and participation deposits in
8 banks and trust companies may be legally invested, as
9 provided by the general laws. The board of public works
10 shall have full power to hold, purchase, sell, assign, trans-
11 fer or dispose of any of the securities or investments in
12 which any of the moneys of the retirement system have
13 been invested, as well as the proceeds of such investments.
14 It shall be the duty of every state department or insti-
15 tution issuing any bonds to offer same in writing to the
16 board of public works prior to advertising them for sale.

17 The said board, within fifteen days from and after re-
18 ceipt of such offer, may accept or reject such offer in
19 whole or in part. Available cash on deposit shall not ex-
20 ceed ten per cent of the total assets of the system.

Sec. 39. *No Trustee Shall Gain from Investments of*
2 *System.*—Except as otherwise provided in this article, no
3 trustee, no member of the board of public works, and no
4 employee of the board of trustees shall have any interest,
5 direct or indirect, in the gains or profits arising from any
6 investment or reinvestment of retirement system moneys.
7 No trustee, no member of the board of public works, and
8 no employee of the board of trustees shall, directly or
9 indirectly, for himself or as an agent or partner of others,
10 in any manner use the same, except to make current and
11 necessary payments as are authorized by the board of
12 trustees. No trustee, no member of the board of public
13 works, and no employee of the board of trustees shall
14 become an endorser or surety or become in any manner
15 an obligor for moneys loaned or borrowed by the retire-
16 ment system. Nothing contained herein shall be con-
17 strued to impair the rights of any member of the retire-
18 ment system to benefits provided by the system.

Sec. 40. *Restricted Use of Retirement System Moneys.*—
2 The moneys, investments and all other assets of the re-
3 tirement system shall be used for the sole purpose of
4 meeting the disbursements for annuities and other pay-
5 ments authorized by this article, and shall be used for
6 no other purpose whatsoever.

Sec. 41. *Allowance of Regular Interest.*—The board of
2 trustees shall, at the end of each fiscal year, allow and
3 credit regular interest on the balance at the beginning of
4 the said fiscal year in each member's individual account
5 in the members deposit fund, and on the mean balances in
6 the employers accumulation fund and the retirement re-
7 serve fund. The interest so allowed and credited shall
8 be charged to the income fund.

Sec. 42. *Fiscal Year.*—The fiscal year of the retirement
2 system shall coincide with the fiscal year of the state.

Sec. 43. *Pro Rata Reduction of Annuities.*—Any provi-

2 sion in this article to the contrary notwithstanding, if at
3 the end of any fiscal year the total of the annuities paid
4 from the retirement reserve fund during the said fiscal
5 year is more than ten per cent of the sum of the balances
6 in the employers accumulation fund and the retirement
7 reserve fund at the end of the said fiscal year, the said an-
8 nuities payable in the next ensuing fiscal year shall be re-
9 duced, pro rata, so that the sum of the annuities so reduced
10 shall not exceed ten per cent of the sum of the said bal-
11 ances in the employers accumulation fund and the retire-
12 ment reserve fund. The said pro rata reduction shall be
13 applied to all annuities payable in the said ensuing fiscal
14 year.

Sec. 44. *Errors.*—Should any change or error in the
2 records of any participating public employer or the re-
3 tirement system result in any person receiving from the
4 system more or less than he would have been entitled to
5 receive had the records been correct, the board of trustees
6 shall correct such error, and as far as is practicable shall
7 adjust the payment of the benefit in such manner that the
8 actuarial equivalent of the benefit to which such person
9 was correctly entitled shall be paid.

Sec. 45. *Fraud; Penalty.*—Any person who shall know-
2 ingly make any false statement or shall falsify or permit
3 to be falsified any record or records of the retirement
4 system in any attempt to defraud the system shall be
5 guilty of a misdemeanor, and, upon conviction thereof,
6 shall be punished accordingly.

Sec. 46. *Right to Benefits Not Subject to Execution, etc.;*
2 *Assignments Prohibited.*—The right of a person to any
3 benefit provided for in this article shall not be subject to
4 execution, attachment, garnishment, the operation of
5 bankruptcy or insolvency laws, or other process whatso-
6 ever, nor shall any assignment thereof be enforceable in
7 any court: *Provided*, That should a member be covered
8 by a group insurance or prepayment plan participated in
9 by a participating public employer, and should he be per-
10 mitted to, and elect to, continue such coverage as a re-
11 tirant, he may authorize the board of trustees to have
12 deducted from his annuity the payments required of him

13 to continue coverage under such group insurance or pre-
14 payment plan: *Provided further*, That a participating
15 public employer shall have the right of setoff for any
16 claim arising from embezzlement by, or fraud of, a mem-
17 ber, retirant or beneficiary.

Sec. 47. *Tax Exemptions*.—The annuities and other
2 benefits provided by this article, and the assets of the
3 retirement system, are hereby exempt from state, county
4 and municipal taxes.

Sec. 48. *Validity*.—If any part of this article is declared
2 unconstitutional by a court of competent jurisdiction,
3 such decision shall not affect the validity of the remaining
4 provisions of this article, or the article in its entirety.

CHAPTER 119

(House Bill No. 444—By Mr. Speaker, Mr. Singleton)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing the issuance and sale of not exceeding
five million dollars of road bonds of the state of West
Virginia to raise money for road construction and main-
tenance purposes under and by virtue of the "Good Roads
Amendment" to the constitution adopted at the general
election held in November, one thousand nine hundred
twenty; to provide for the distribution and expenditure
of the proceeds of sale thereof, and to provide for the levy
and collection of an annual state tax and other revenues
sufficient to pay semiannually the interest on such bonds
and the principal thereof within twenty-five years.

Section

1. Road bonds; amount; when may issue.
2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
3. Form of bond.
4. Form of coupon.
5. Listing by auditor.
6. State road sinking fund sources used to pay bonds and interest; investment of remainder.
7. Tax levy to pay.
8. Sale by governor; minimum price.

9. Proceeds paid into state road fund.
10. Plates property of state.
11. Auditor to be custodian of unsold bonds.
12. Interim certificates.
13. Payment of expenses.

Be it enacted by the Legislature of West Virginia:

Section 1. Road Bonds; Amount; When May Issue.—

2 Bonds of the state of West Virginia of the par value of
3 five million dollars are hereby authorized to be issued
4 and sold for the purpose of raising funds for assisting in
5 building, constructing and maintaining the system of
6 roads and highways provided for by the constitution.
7 Such bonds may be issued by the governor in such
8 amounts, in coupon or registered form, in such denomi-
9 nations, at such times and bearing such date or dates as
10 the governor may determine, and shall become due and
11 payable serially in equal amounts beginning one year and
12 ending twenty-five years from the date thereof: *Provided,*
13 *however,* That no bonds may be issued under the pro-
14 visions of this act until bonds authorized and issued under
15 the provisions of the "Good Roads Amendment" to the
16 constitution of the state, ratified at the general election
17 held in November, one thousand nine hundred twenty,
18 have been retired and canceled out of the state road
19 sinking fund created by section six, chapter one hundred
20 thirteen, acts of the Legislature of West Virginia, one
21 thousand nine hundred twenty-one, in an amount equal
22 to or greater than the amount to be issued hereunder at
23 any one time.

Sec. 2. Transfer Fee; Registration Fee; Where Payable;

2 *Interest Rate; Tax Exempt.*—The auditor and the trea-
3 surer are hereby authorized to arrange for the transfer
4 of registered bonds, and for each such transfer a fee of
5 fifty cents shall be charged by and paid to the state of
6 West Virginia, to the credit of the state road sinking
7 fund. Bonds taken in exchange shall be canceled by the
8 auditor and treasurer and be carefully preserved by the
9 treasurer. The treasurer shall make provisions for regis-
10 tering "payable to bearer" bonds, and for each bond
11 registered a fee of fifty cents shall likewise be charged

12 by and paid to the state of West Virginia, to the credit
13 of the state road sinking fund. All such bonds shall be
14 payable at the office of the treasurer of the state of West
15 Virginia, or, at the option of the holder, at some bank
16 in the city of New York to be designated by the governor.
17 The bonds shall bear interest at a rate not exceeding four
18 and one-half percent per annum, payable semiannually,
19 on the first day of _____, and the first day
20 of _____, of each year, to bearer, at the
21 office of the treasurer of the state of West Virginia, at the
22 capitol of the state, or at the bank designated by the
23 governor, upon presentation and surrender of interest
24 coupons, then due, in the case of coupon bonds. In the
25 case of registered bonds the treasurer of the state of West
26 Virginia shall issue his check for the interest then due
27 on the first day of _____, and _____
28 of each year, and mail it to the registered owner at the
29 address as shown by the record of registration. Both
30 the principal and interest of the bonds shall be payable
31 in lawful money of the United States of America and
32 the bonds shall be exempt from taxation by the state of
33 West Virginia, or by any county, district, or municipality
34 thereof, which facts shall appear on the face of the bonds
35 as part of the contract with the holder thereof.

Sec. 3. *Form of Bond.*—The bonds and coupons shall
2 be engraved and the bonds shall be signed on behalf of
3 the state of West Virginia, by the treasurer thereof, under
4 the great seal of the state, and countersigned by the
5 auditor of the state, and shall be in the following form
6 or to the following effect, as nearly as may be, namely:

7 COUPON ROAD BOND
8 (Or registered road bond, as the case may be)
9 OF THE
10 STATE OF WEST VIRGINIA
11 \$ _____ No. _____

12 The state of West Virginia, under and by virtue of
13 authority of an act of the Legislature passed at the regu-
14 lar session of one thousand nine hundred sixty-one, on
15 the _____ day of _____, one thousand

16 nine hundred sixty-one, and approved by the governor
17 on the _____ day of _____, one thousand
18 nine hundred sixty-one, which is hereby made a part
19 hereof as fully as if set forth at length herein, acknow-
20 ledges itself to be indebted to and hereby promises to
21 pay to the bearer hereof (in the case of a coupon bond)
22 or to _____ or assigns (the
23 owner of record, in case of registered bonds) on the _____
24 day of _____, 19____, in lawful money of
25 the United States of America at the office of the treasurer
26 of the state of West Virginia at the capitol of said state,
27 or at the option of the holder at _____
28 bank in the city of New York, the sum of _____
29 _____dollars, with interest thereon at _____
30 percentum per annum from date, payable semiannually
31 in like lawful money of the United States of America at
32 the treasurer's office or bank aforesaid, on the first day of
33 _____ and the first day of _____
34 of each year, (and in the case of coupon bonds) according
35 to the tenor of the annexed coupons bearing the engraved
36 facsimile signature of the treasurer of the state of West
37 Virginia, upon surrender of such coupons. This bond (in
38 case of a coupon bond) may be exchanged for a registered
39 bond of like tenor upon application to the treasurer of
40 the state of West Virginia.

41 To secure the payment of this bond, principal sum and
42 interest, when other funds and revenues sufficient are
43 not available for that purpose, it is agreed that within
44 the limits prescribed by the constitution, the board of
45 public works of the state of West Virginia shall annually
46 cause to be levied and collected an annual state tax on all
47 property in the state, until this bond is fully paid, suffi-
48 cient to pay the annual interest on this bond and the
49 principal sum thereof within the time this bond becomes
50 due and payable.

51 This bond is hereby made exempt from any taxation
52 by the state of West Virginia, or by any county, district,
53 or municipal corporation thereof.

54 In testimony whereof, witness the signature of the
55 treasurer of the state of West Virginia, and the counter-
56 signature of the auditor of the state, hereto affixed ac-

57 cording to law, dated the day of
 58 one thousand nine hundred, and
 59 the seal of the state of West Virginia.

60 (SEAL)

61

62 Treasurer of the State of West Virginia

63 Countersigned:

64

65 Auditor of the State of West Virginia

Sec. 4. *Form of Coupon.*—The form of coupon shall be
 2 substantially as follows, to wit:

3 STATE OF WEST VIRGINIA

4 Bond No. Coupon No.

5 On the first day of, 19....., the
 6 state of West Virginia will pay to the bearer, in lawful
 7 money of the United States of America, at the office of
 8 the treasurer of the state, or at the option of the holder
 9 atbank in the city
 10 of New York, the sum of
 11 dollars, the same being semiannual interest on Road
 12 Bond No.

13

14 Treasurer of the State of West Virginia

15 The signature of the treasurer to such coupon shall be
 16 by his engraved facsimile signature and the coupons
 17 shall be numbered in the order of their maturity, from
 18 number one consecutively. The bonds and coupons may
 19 be signed by the present treasurer and auditor, or by
 20 any of their respective successors in office, and the bonds
 21 signed by the persons now in office may be sold by the
 22 governor or his successor in office without being signed
 23 by the successor in office of the present treasurer or
 24 auditor.

Sec. 5. *Listing by Auditor.*—All coupon and registered
 2 bonds issued under this act shall be separately listed by
 3 the auditor of the state in books provided for the purpose,
 4 in each case giving the date, number, character and
 5 amount of obligations issued, and in case of registered

6 bonds, the name and postoffice address of the person,
7 firm or corporation registered as the owner thereof.

Sec. 6. *State Road Sinking Fund Sources Used to Pay
2 Bonds and Interest; Investment of Remainder.*—Into the
3 state road sinking fund there shall be paid all moneys
4 received from the annual state tax levy on the taxable
5 property in the state levied under the provisions of this
6 act, from any and all appropriations made by the state
7 from other sources for the purpose of paying the interest
8 on such bonds or paying off and retiring the bonds, from
9 fines, forfeitures and penalties, if any, made applicable
10 by law for the payment of such bonds or the interest
11 thereon, from transfer fees as herein provided, and from
12 any source whatsoever, which is made liable by law for
13 the payment of the principal of such bonds or the interest
14 thereon.

15 All such funds shall be kept by the treasurer in a
16 separate account, under the designation aforesaid, and all
17 money belonging to the fund shall be deposited in the
18 state treasury to the credit thereof.

19 Such fund shall be applied by the treasurer of the state
20 first to the payment of the semiannual interest on such
21 bonds as it shall become due as herein provided. The
22 remainder of the fund shall be turned over by the state
23 treasurer to the state sinking fund commission, whose
24 duty it shall be to invest the same in bonds of the govern-
25 ment of the United States, bonds of the state of West
26 Virginia, or any political subdivision thereof: *Provided,*
27 *however,* That bonds so purchased by the state sinking
28 fund commission shall mature so as to provide sufficient
29 money to pay off all bonds herein provided to be issued
30 as they become due; and the money so paid into the state
31 road sinking fund under the provisions of this act shall
32 be expended for the purpose of paying the interest and
33 principal of the bonds hereby provided for as they
34 severally become due and payable and for no other pur-
35 pose except that the fund may be invested until needed,
36 as herein provided.

Sec. 7. *Tax Levy to Pay, unless other Funds Available.*
2 —In order to provide the revenue necessary for the pay-

3 ment of the principal and interest of such bonds, as here-
4 inbefore provided, the board of public works, within the
5 limits prescribed by the constitution, is authorized, em-
6 powered and directed to lay annually a tax upon all
7 real and personal property subject to taxation within
8 this state, sufficient to pay interest on the bonds accruing
9 during the current year and one twenty-fifth of the total
10 issue (at par value) of such bonds, for such number of
11 years, not exceeding twenty-five, as may be necessary
12 to pay the interest thereon and to pay off the principal
13 sum of the bonds; and such taxes, when so collected, shall
14 not be liable for or applicable to any other purpose:
15 *Provided, however,* That if there be other funds in the
16 state treasury, or in the state road funds, in any fiscal
17 year, not otherwise appropriated, or if other sources of
18 revenue be hereafter provided by law for the purpose,
19 the board of public works is authorized, empowered and
20 directed to set apart, in any year there be such funds, or
21 other sources of revenue provided for such purpose, a
22 sum sufficient to pay the interest on bonds accruing
23 during the current year, and to pay off, and retire the
24 principal of such bonds, or any part thereof, at maturity.

25 The authority hereby vested in the board of public
26 works shall be in addition to the authority now vested
27 in it by present law.

Sec. 8. *Sale by Governor; Minimum Price.*—The gov-
2 ernor shall sell the bonds herein mentioned at such time
3 or times as he may determine necessary to provide funds
4 for road construction and maintenance purposes, as here-
5 in provided, upon recommendation of the state road com-
6 missioner. All sales shall be at not less than par and
7 accrued interest. All interest coupons becoming payable
8 prior to the sale date shall be canceled by the treasurer
9 and rendered ineffective, before the delivery of the bonds
10 so sold.

Sec. 9. *Proceeds Paid into State Road Fund.*—The pro-
2 ceeds of all sales of bonds herein authorized shall be paid
3 into the state road fund created by section one, article
4 three, chapter seventeen of the code of West Virginia,
5 one thousand nine hundred thirty-one, as last amended.

2 Sec. 10. *Plates Property of State.*—The plates from
3 which the bonds authorized by this act are engraved
4 shall be the property of the state of West Virginia.

2 Sec. 11. *Auditor to Be Custodian of Unsold Bonds.*—
3 The state auditor shall be the custodian of all unsold
4 bonds issued pursuant to the provisions of this act.

2 Sec. 12. *Interim Certificates.*—The governor may au-
3 thorize the issuance of interim certificates to be issued
4 to the purchasers of such bonds to be held by them in
5 lieu of engraved bonds. When interim certificates are
6 so issued, they shall become full and legal obligations of
7 the state of West Virginia under all of the provisions of
8 this act just as fully and completely as the engraved and
9 permanent bonds.

2 Sec. 13. *Payment of Expenses.*—All necessary expenses
3 incurred in the execution of this act shall be paid out of
4 the state road fund on warrants of the auditor of the
5 state drawn on the state treasurer.

CHAPTER 120

(House Bill No. 283—By Mr. Poindexter and Mr. Casey)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections nineteen, twenty-two, twenty-three and twenty-three-b, all relating to toll bridges and the powers and duties of the state road commissioner of West Virginia.

Article 17. Toll Bridges.

Section

- 19. Bridge revenue bonds; proceeds.
- 22. Tolls to be charged; intrastate and interstate bridges; purchase of existing bridges; disposition of tolls.
- 23. When tolls to cease.
- 23-b. Combining of bridges; imposition or reimposition of tolls upon existing bridges; revenue bonds; disposition of tolls.

Be it enacted by the Legislature of West Virginia:

That article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections nineteen, twenty-two, twenty-three and twenty-three-b of said article, all to read as follows:

Section 19. *Bridge Revenue Bonds; Proceeds.*—The
2 commission may pay the cost as defined hereinabove of
3 any one or more such bridges by the issuance of bridge
4 revenue bonds of the state, by a resolution of the com-
5 mission which shall recite an estimate by the commission
6 of such cost, the principal and interest of which bonds
7 shall be payable solely from the special fund herein pro-
8 vided for such payment. The commission, after any such
9 issue of bonds or simultaneously therewith, may issue
10 further issues of bonds to pay the cost of any other one
11 or more of such bridges, in the manner and subject to all
12 of the provisions herein contained as to the bonds first
13 mentioned in this section. All such bonds shall have and
14 are hereby declared to have all the qualities of negotiable
15 instruments under the law merchant. Such bonds shall
16 bear interest at not more than six percent per annum,
17 payable semiannually, and shall mature in not more than
18 forty years from their date or dates and may be made re-
19 deemable at the option of the state, to be exercised by
20 the commission, at such price and under such terms and
21 conditions as the commission may fix prior to issuance
22 of such bonds. The commission shall determine the form
23 of such bonds, including coupons to be attached thereto
24 to evidence the right of interest payments, which bonds
25 shall be signed by the governor and the chairman of the
26 commission, under the great seal of the state, attested
27 by the secretary of state, and the coupons attached there-
28 to shall bear the facsimile signature of the chairman of
29 the commission. In case any of the officers whose signa-
30 tures appear on the bonds or coupons shall cease to be
31 such officers before the delivery of such bonds, such sig-
32 natures shall nevertheless be valid and sufficient for all
33 purposes the same as if they had remained in office until
34 such delivery. The commission shall fix the denomina-
35 tions of such bonds, the principal and interest of which

36 shall be payable at the office of the treasurer of the state
37 of West Virginia, at the capitol of said state, or, at the
38 option of the holder, at some bank or trust company in
39 the city of New York to be named in the bonds, either
40 in lawful money or in gold coin of the United States, of
41 or equal to the then current standard of weight and fine-
42 ness, as may be determined by the commission. Such
43 bonds shall be exempt from taxation by the state of West
44 Virginia or any county or municipality therein. The com-
45 mission may provide for the registration of such bonds
46 in the name of the owner as to principal alone and as
47 to both principal and interest under such terms and con-
48 ditions as the commission may determine, and shall sell
49 such bonds in such manner as it may determine to be for
50 the best interest of the state, taking into consideration
51 the financial responsibility of the purchaser and the terms
52 and conditions of the purchase and especially the avail-
53 ability of the proceeds of the bonds when required for
54 payment of the cost of the bridges, such sale to be made
55 at a price not lower than a price which, computed upon
56 standard tables of bond values, will show a net return of
57 six percent per annum to the purchaser upon the amount
58 paid therefor.

59 The proceeds of such bonds shall be used solely for the
60 payment of the cost of the bridges, and shall be checked
61 out by the chairman of the commission and the secretary-
62 treasurer thereof and under such further restrictions, if
63 any, as the commission may provide. If the proceeds
64 of such bonds, by error or calculation or otherwise, shall
65 be less than the cost of the bridge or bridges, additional
66 bonds may in like manner be issued to provide the amount
67 of such deficit, and, unless otherwise provided in the trust
68 agreement hereinafter mentioned, shall be deemed to be
69 of the same issue and shall be entitled to payment from
70 the same fund, without preference or priority of the bonds
71 first issued for the same bridge or bridges. If the pro-
72 ceeds of bonds issued for any bridge or bridges shall ex-
73 ceed the cost thereof, the surplus shall be paid into the
74 fund hereinafter provided for payment of the principal
75 and interest of such bonds. Such fund may be used for
76 the purchase of any of the outstanding bonds payable

77 from such fund at the market price, but at not exceeding
78 the price, if any, at which such bonds shall in the same
79 year be redeemable, and all bonds redeemed or purchased
80 shall forthwith be cancelled and shall not again be issued.

81 Prior to the preparation of definitive bonds, the com-
82 mission may under like restrictions issue temporary bonds
83 with or without coupons, exchangeable for definitive
84 bonds upon the issuance of the latter. Such revenue bonds
85 may be issued without any other proceedings or the hap-
86 pening of any other conditions or things than those pro-
87 ceedings, conditions and things which are specified and
88 required by this article or by the constitution of the state.

Sec. 22. *Tolls to Be Charged; Intrastate and Interstate
2 Bridges; Purchase of Existing Bridges; Disposition of
3 Tolls.*—Tolls shall be fixed, charged and collected for
4 transit over such bridges and shall be so fixed and ad-
5 justed, in respect of the aggregate of tolls from the bridge
6 or bridges for which a single issue of bonds is issued, as
7 to provide a fund sufficient to pay the principal and inter-
8 est of such issue of bonds and to provide an additional
9 fund to pay the cost of maintaining, repairing and operat-
10 ing such bridge or bridges, subject, however, to any ap-
11 plicable law or regulation of the United States of America
12 now in force or hereafter to be enacted or made. Two
13 or more bridges may be included in one issue of bonds,
14 and intrastate and interstate bridges may be grouped in
15 the same issue: *Provided*, That no existing bridge or
16 bridges shall be acquired by purchase, eminent domain, or
17 otherwise, unless the state road commissioner shall have
18 determined that the income therefrom, based upon the
19 toll receipts for the next preceding fiscal or calendar year,
20 will be sufficient to pay all expenses of operating and
21 maintaining such bridge, in addition to the interest and
22 sinking fund requirements of any bonds to be issued to
23 pay the purchase price thereof, or, if such existing bridge
24 or bridges are to be combined with any other bridge
25 or bridges, either then existing or thereafter to be con-
26 structed or acquired by purchase, eminent domain, or
27 otherwise, as provided in section twenty-three-b follow-
28 ing, unless the state road commissioner shall have deter-
29 mined that the income from such combined bridges, based

2
30 upon the toll receipts for the next preceding fiscal or
31 calendar year in the case of any existing bridge or bridges
32 and upon estimates of future toll receipts in the case of
33 any bridge or bridges to be constructed, will be sufficient
34 to pay all expenses of operating and maintaining such
35 combined bridges, in addition to the interest and sinking
36 fund requirements of any bonds issued to pay the pur-
37 chase price of such existing bridge or bridges and the in-
38 terest and sinking fund requirements of any bonds issued
39 to pay the cost of construction, acquiring, modernizing, re-
40 pairing, reconstructing or improving any bridge or bridges
41 and approaches thereto, with which such existing bridge
42 or bridges are to be so combined. The tolls from the bridge
43 or bridges for which a single issue of bonds is issued,
44 except such part thereof as may be necessary to pay such
45 cost of maintaining, repairing and operating during any
46 period in which such cost is not otherwise provided for
47 (during which period the tolls may be reduced accord-
48 ingly), shall be transmitted each month to the state sink-
49 ing fund commission and by it placed in a special fund
50 which is hereby pledged to and charged with the payment
51 of the principal of such bonds and the interest thereon,
52 and to the redemption or repurchase of such bonds, such
53 special fund to be a fund for all such bonds without dis-
54 tinction or priority of one over another. The moneys in
55 such special fund, less a reserve for payment of interest,
56 if not used by the sinking fund commission within a
57 reasonable time for the purchase of bonds for cancella-
58 tion at a price not exceeding the market price and not
59 exceeding the redemption price, shall be applied to the
60 redemption of bonds by lot at the redemption price then
61 applicable.

62 Any bridge or bridges constructed or acquired by pur-
63 chase, eminent domain, or otherwise, or reconstructed, re-
64 paired or improved, under the provisions of this article and
65 forming a connecting link between two or more state
66 highways, or providing a river crossing for a state high-
67 way, are hereby adopted as a part of the state road sys-
68 tem, but no such bridge or bridges shall be constructed
69 or acquired by purchase, eminent domain, or otherwise,
70 or reconstructed, repaired or improved, under the pro-

visions of this article without the approval in writing of the state road commissioner and the governor. If there be in the funds of the state sinking fund commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing or improving, such bridge or bridges, the state road commissioner is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

Sec. 23. *When Tolls to Cease.*—When the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, and there are no operating or maintenance expenses outstanding, and any advances made from the state road fund toward the construction, operation and maintenance of such bridge or bridges shall have been repaid, the authority operating such bridge or bridges shall cease the collection of tolls for the use thereof: *Provided, however,* That the commissioner may, in his discretion, continue thereafter tolls for a period sufficient to accumulate sufficient funds to pay for major maintenance and repairs foreseeable as being needed on such bridge or bridges in the immediate future: *And provided further,* That tolls may be imposed or reimposed on any such bridge or bridges in the manner provided in section twenty-three-b following. Thereafter, and as long as the cost of maintaining, repairing and operating such bridge or bridges is being provided for through means other than tolls, no tolls shall be charged for transit thereover and such bridge or bridges shall be free: *Provided, however,* That notwithstanding any other provision of law, if any portion of the cost of construction of a toll bridge is financed, with the aid of federal funds under federal-aid road legislation and the share of the cost of such bridge borne by the state or its subdivisions shall have been repaid from tolls, or a fund sufficient for such repayment shall have been provided or set aside for that purpose,

30 tolls for the use of such bridge shall cease and such bridge
31 shall thereafter be maintained and operated as a free
32 bridge.

Sec. 23-b. *Combining of Bridges; Imposition or Reim-*
2 *position of Tolls upon Existing Bridges; Revenue Bonds;*
3 *Disposition of Tolls.*—The commissioner is hereby au-
4 thorized and empowered to combine any two or more
5 bridges, including existing bridges and bridges to be con-
6 structed or acquired by purchase, eminent domain or
7 otherwise and to pledge all or any part of the revenue
8 derived from such combined bridges to the payment of
9 interest and sinking fund requirements of any bonds is-
10 sued in respect of said combined bridges, or either of them,
11 pursuant to this section.

12 The commissioner is hereby authorized to impose or
13 reimpose tolls or other charges on any existing bridge or
14 bridges which shall be combined, pursuant to this section,
15 with any other bridge, either existing or to be constructed
16 or acquired and the tolls and other charges fixed by the
17 commissioner for the bridges so combined, pursuant to
18 this section, shall be fixed and adjusted in respect to the
19 aggregate of tolls from the bridges so combined, so as to
20 be sufficient to pay all expenses of operating, maintaining
21 and repairing the combined bridges and the interest and
22 sinking fund requirements of any bonds issued in respect
23 of said combined bridges, or either of them, pursuant
24 to this section: *Provided, however,* That no such tolls or
25 other charges shall be imposed or reimposed on any
26 existing bridge unless the imposition or reimposition
27 thereof shall have, first, been approved by a resolution
28 duly adopted by the council or other governing body of
29 the municipality in which such existing bridge is situate,
30 or, if such existing bridge is not situate within the limits
31 of a municipality, then the imposition or reimposition of
32 such tolls or other charges shall be first approved by an
33 order duly adopted by the county court of the county or
34 counties in which such existing bridge is situate. In
35 either case, a certified copy of the resolution or order
36 shall be filed with the commissioner.

37 The tolls and other charges from bridges so combined
38 pursuant to this section, for which bonds are issued pur-

39 suant to this section, except such part thereof as may
40 be necessary to pay the cost of maintaining, repairing,
41 and operating such bridges during any period in which
42 such cost is not otherwise provided for (during which
43 period the tolls may be reduced accordingly), shall be
44 transmitted each month to the state sinking fund com-
45 mission and by it placed in a special fund which is hereby
46 pledged to and charged with the payment of the princi-
47 pal of such bonds and the interest thereon, and to the
48 redemption or repurchase of such bonds, such special fund
49 to be a fund for all such bonds without distinction or
50 priority of one over another. The moneys in such special
51 fund, less a reserve for payment of interest and sinking
52 fund requirements, if not used by the sinking fund com-
53 mission within a reasonable time for the purchase of bonds
54 for cancellation at a price not exceeding the market price
55 and not exceeding the redemption price, shall be applied
56 to the redemption of bonds by lot at the redemption price
57 then applicable.

58 The commission may pay the cost, as hereinbefore in
59 this article defined, of construction or acquisition by pur-
60 chase, eminent domain or otherwise of any bridge or
61 bridges combined with any other bridge or bridges pur-
62 suant to this section and/or the cost of modernization,
63 improvement, repair and reconstruction of any existing
64 bridge so combined with any other bridge or bridges
65 pursuant to this section, including modernization, im-
66 provement, repair, reconstruction, construction and acqui-
67 sition of approaches thereto, by the issuance of bridge
68 revenue bonds of the state. Any such bridge revenue
69 bonds shall be issued in the manner and in accordance
70 with the procedure for the issuance of bridge revenue
71 bonds hereinbefore set forth in this article: *Provided,*
72 *however,* That nothing in this article shall be construed
73 to permit any combination of an existing toll bridge with
74 any other bridge at any time when there are bonds on
75 such existing toll bridge unpaid or when any such toll
76 bridge bonds, either the principal or interest thereon, are
77 in default.

CHAPTER 121

(Senate Bill No. 143—By Mr. Smith and Mr. Carrigan)

[Passed March 11, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article nineteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposal of litter and certain other material on and near highways and certain enumerated other locations; issuance of notice to the public, and providing penalties.

Article 19. General Criminal Provisions.

Section

13-b. Unlawful disposal of litter, etc.; prima facie evidence of violation; notice of section; enforcement; penalty.

Be it enacted by the Legislature of West Virginia:

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

Section 13-b. *Unlawful Disposal of Litter, etc.; Prima Facie Evidence of Violation; Notice of Section; Enforcement; Penalty.*—It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, cans, bottles, papers, ashes, cigarette or cigar butts, junk, carcass of any dead animal, offal, waste, or any other offensive or unsightly matter in or upon any public or private highway, road, street or alley, or upon the surface of any land within one hundred yards thereof without the consent of the owner, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than in such place as may be set aside for such purpose by the governing body having charge thereof.

17 If any such material is thrown, cast, dumped or dis-

18 charged from a motor vehicle in violation of this section,
19 such action shall be deemed prima facie evidence that
20 the owner or driver of such motor vehicle intended to vio-
21 late this section.

22 The state commissioner of motor vehicles, upon register-
23 ing a motor vehicle or issuing an operator's or chauffeur's
24 license, shall place upon the application for registration
25 or on the license so issued a digest of this section briefly
26 explaining this section.

27 The state road commissioner shall cause appropriate
28 signs to be placed at the state boundary on each primary
29 and secondary road, informing those entering the state of
30 the maximum penalty herein provided for disposing of
31 litter in, upon and near highways and roads in violation
32 of this section.

33 No portion of this section shall be construed to restrict
34 a private owner or lessee in the use of his own private
35 property or leased property, or to prohibit the disposal of
36 materials designated in this section in any manner au-
37 thorized by law.

38 In addition to enforcement by all proper law enforce-
39 ment agencies, this section shall also be enforced by the
40 state director of conservation, the United States forestry
41 service and all other officers vested with powers and au-
42 thority of game protectors.

43 Any person violating this section shall be guilty of a
44 misdemeanor, and, upon conviction thereof, shall be fined
45 not less than twenty nor more than five hundred dollars.

CHAPTER 122

(House Bill No. 470—By Mr. Peters)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to outdoor advertising along interstate highways.

Article 22. Outdoor Advertising.**Section**

14-a. Outdoor advertising along interstate highways.

Be it enacted by the Legislature of West Virginia:

That article twenty-two, chapter seventeen 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-a, to read as follows:

Section 14-a. *Outdoor Advertising Along Interstate Highways.*—Notwithstanding the other provisions of this article, no advertisement, advertising structure, or advertising sign shall be erected or maintained upon or within six hundred and sixty feet of the right of way of any road or highway which is a part of the national system of interstate and defense highways, constructed upon any part of right of way, the entire width of which is acquired subsequent to July one, one thousand nine hundred fifty-six, except that the commissioner shall promulgate rules and regulations permitting the erection of such advertising devices within the protected area of six hundred and sixty feet, which rules and regulations shall be correlated to and conform with the national standards prepared and promulgated by the bureau of public roads of the United States department of commerce. The commissioner is hereby authorized to enter into agreements with the United States secretary of commerce for the purpose of carrying out the national policy of promoting the safety, convenience and enjoyment of public travel and the free flow of interstate commerce and the protection of the public investment in the national system of interstate and defense highways within the state.

All agreements and regulations made pursuant to this section shall not apply to those segments of the interstate system which traverse commercial or industrial zones within boundaries of incorporated municipalities, as such boundaries existed on September twenty-one, one thousand nine hundred fifty-nine, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control, or which traverse other areas

32 where the land use as of September twenty-one, one thou-
33 sand nine hundred fifty-nine, was clearly established by
34 state law as industrial or commercial and this section shall
35 not be deemed to prohibit advertisements, advertising
36 structures or advertising signs within such zones or areas.

CHAPTER 123

(Senate Bill No. 123—By Mr. Smith)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to the creation of the West Virginia historic commission.

Article 24. West Virginia Historic Commission.

Section

1. Commission created; composition; appointment and terms of members; reimbursement for expenses; secretary and treasurer.
2. West Virginia historic commission created; number of members; how appointed; term.
3. Powers and duties of commission; assistance of state road commission.
4. Special fund created; cooperation with centennial commission.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen 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-four, to read as follows:

Section 1. *Commission Created; Composition; Appointment and Terms of Members; Reimbursement for Expenses; Secretary and Treasurer.*—It is hereby declared, as a matter of legislative determination:

- (a) That the state of West Virginia, being richly endowed in historic achievement, should erect and preserve adequate markers along its roads and highways pointing

- 8 out for future generations the important role played by
9 our state in the dynamic development of our country.
- 10 (b) That in the past, some four hundred historic road
11 markers were placed along the highways; however, since
12 no agency was designated to preserve and maintain such
13 markers, they have fallen into a state of disrepair or have
14 been destroyed.
- 15 (c) That this article contemplates the creation of a
16 commission, which shall be authorized and empowered to
17 place historic road markers at appropriate places and to
18 preserve and maintain such markers; it is further con-
19 templated that the necessary appropriation shall be made
20 so that the commission may accomplish the purposes here-
21 in set out.

Sec. 2. *West Virginia Historic Commission Created; Number of Members; How Appointed; Term.*—There is
2 hereby created the West Virginia historic commission
3 hereinafter referred to as the commission, to consist of five
4 members, one of whom shall be a member of the West
5 Virginia historical society, and all of whom shall be ap-
6 pointed by the governor, by and with the advice and con-
7 sent of the senate. The term of office for those so ap-
8 pointed shall be four years. All of the members of said
9 commission shall serve without pay, but shall be reim-
10 bursed for any and all actual expenses incurred in the
11 performance of their duties hereunder. The director of
12 the department of archives and history shall be the sec-
13 retary and treasurer of such commission.

Sec. 3. *Powers and Duties of Commission; Assistance of State Road Commission.*—The commission shall be au-
2 thorized and empowered to purchase new road markers,
3 replace old road markers, protect, preserve and display
4 the Fairfax stones, purchase markers for new highways,
5 and, with the consent of the West Virginia turnpike com-
6 mission, for the West Virginia turnpike; and formulate and
7 write appropriate copy for such markers. The commission
8 is authorized to purchase markers from any commercial
9 company dealing in or manufacturing such markers. The
10 commission shall choose the location of such historic road
11 markers, and the state road commission shall have the
12

13 responsibility for the actual physical placement and re-
14 painting thereof. The cost of such placement and repaint-
15 ing shall be paid out of the appropriation of the com-
16 mission.

Sec. 4. *Special Fund Created; Cooperation with Centen-*
2 *ennial Commission.*—For the purpose of carrying out pro-
3 visions of this article, there is hereby created a special
4 revenue fund entitled the West Virginia historic fund.
5 All moneys appropriated by the Legislature for the pur-
6 poses set out herein shall be deposited in said fund and
7 shall be expended therefrom only for the purposes for
8 which the same are authorized.

9 The West Virginia historic commission shall advise with
10 the West Virginia centennial commission with respect to
11 the historic aspects of the centennial.

12 The West Virginia historic commission shall advise in
13 arranging and equipping the railway car pertaining to the
14 history of the state that shall be a part of the West Vir-
15 ginia centennial train.

CHAPTER 124

(Senate Bill No. 184—By Mr. Carson, Mr. President)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to appointment of assistant attorney general to perform duties for the governor.

Article I. The Governor.

Section

24. Appointment of assistant attorney general to perform duties for governor.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

by adding thereto a new section, designated section twenty-four, to read as follows:

Section 24. *Appointment of Assistant Attorney General to Perform Duties for Governor.* — The governor, if he deem such action necessary, may request the attorney general to appoint an assistant attorney general, who shall perform, under the supervision and direction of the attorney general, such duties as may be required of him by the governor. The attorney general, in pursuance of such request, may select and appoint an assistant attorney general, to serve during the will and pleasure of the attorney general, and the salary of such assistant shall be paid out of any funds made available for that purpose by the Legislature to the office of the governor.

CHAPTER 125

(House Bill No. 225—By Mr. Speaker, Mr. Singleton)

[Passed March 2, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistants to the attorney general.

Article 3. Attorney General.

Section

3. Assistants to attorney general.

Be it enacted by the Legislature of West Virginia:

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

Section 3. *Assistants to Attorney General.*—The attorney general may appoint such assistant attorneys general

3 as may be necessary to properly perform the duties of
4 his office. The total compensation of all such assistants
5 shall be within the limits of the amounts appropriated by
6 the Legislature for personal services. All assistant attor-
7 neys general so appointed shall serve at the pleasure of
8 the attorney general and shall perform such duties as he
9 may require of them.

10 All laws or parts of laws inconsistent with the provisions
11 hereof are hereby amended to be in harmony with the
12 provisions of this section.

CHAPTER 126

(House Bill No. 418—By Mr. Boiarsky)

[Passed March 6, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT directing the state auditor to transfer certain accrued balance in the county, district, and municipal fund to the general revenue fund.

Section

1. Transfer of balance in county, district and municipal fund.

Be it enacted by the Legislature of West Virginia:

Section 1. *Transfer of Balance in County, District and Municipal Fund.*—A balance in the county, district, and
2 municipal fund has been carried for several years on the
3 state financial records, and since there is no practical rea-
4 son for carrying said balance upon the state financial
5 records, effective upon passage of this bill, the state auditor
6 shall transfer from the county, district, and municipal
7 fund, Account 7306, to the general revenue fund, the sum
8 of forty-eight thousand six hundred twenty-two dollars
9 and thirty cents.
10

CHAPTER 127

(House Bill No. 406—By Mr. Speaker, Mr. Singleton)

[Passed March 8, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the state auditor to distribute copies of the book entitled "Making a State" to certain libraries and schools in West Virginia.

Section

1. Distribution of the book entitled "Making a State" to libraries and schools.
-

Be it enacted by the Legislature of West Virginia:

- Section 1. *Distribution of the Book Entitled "Making a State" to Libraries and Schools.*—The state auditor is hereby authorized to furnish copies of the book entitled "Making a State", published by the state of West Virginia, to the libraries of each institution of higher education in this state and to high schools, junior high schools, and elementary schools within the state.

CHAPTER 128

(Senate Bill No. 281—Originating in the Senate
Committed on Finance)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT directing the state auditor to transfer immediately certain accrued amounts from balances now in special revenue accounts of the department of labor, bedding division; real estate commission; insurance commissioner, fees, insurance department; barbers and beauticians, to the general revenue fund.

Section

1. Transfer of sums in special revenue accounts.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Transfer of Sums in Special Revenue Accounts.*—Balances in certain revenue accounts having accumulated on state financial records in excess of appropriations, and there being no practical reason for continuing such large sums upon the state's financial records, the state auditor shall immediately transfer from special revenue funds to the general revenue funds, as follows:
- (a) Department of Labor, Bedding Division, Account No. 843, the sum of sixty-five thousand dollars;
 - (b) Real Estate Commission, Account No. 801, the sum of seventy-five thousand dollars;
 - (c) Insurance Commissioner, Insurance Department, Account No. 826, the sum of one hundred and thirty-five thousand dollars;
 - (d) Barbers and Beauticians, Account No. 822, the sum of twenty-five thousand dollars.

CHAPTER 129

(Senate Bill No. 19—By Mr. Carson, Mr. President)

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal sections eleven and twelve, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five, six, seven and eight of said article nine; and to further amend said article nine by adding thereto two new sections, designated sections nine-a and ten, all relating to the supervision of public offices.

Article 9. Supervision of Public Offices.

Section

2. How and by whom system of accounting prescribed.
3. Separate accounts for different appropriations.

5. Reports to and by chief inspector.
6. Accounts and reports by local public officers.
7. Examination into affairs of local public officers.
8. Cost of services of chief inspector; revolving fund.
- 9-a. Public inspection of reports.
10. Statutory references to audits or examinations by tax commissioner, inspector or supervisor of public offices.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, three, five, six, seven and eight of said article nine be amended and re-enacted; and that said article nine be further amended by adding thereto two new sections, designated sections nine-a and ten, all to read as follows:

Section 2. How and by Whom System of Accounting

- 2 *Prescribed.*—The chief inspector shall formulate, pre-
3 scribe and install a system of accounting and reporting in
4 conformity with the provisions of this article, which shall
5 be uniform for all local governmental offices or agencies
6 (including district offices and justices of the peace and
7 constables), and for all public accounts of the same class,
8 and which shall exhibit true accounts and detailed state-
9 ments for all public funds collected, received and ex-
10 pended for any purpose whatever by all local govern-
11 mental officers, employees or other persons. Such accounts
12 shall show the receipt, use and disposition of all public
13 property under their control, and the income (if any)
14 derived therefrom, and of all sources of such public in-
15 come, and the amounts due and received from each source,
16 all receipts, vouchers and other documents kept or that
17 may be required to be kept and necessary to identify and
18 prove the validity of every transaction, and all statements
19 and reports made or required to be made for the internal
20 administration of the office to which they pertain, and all
21 reports published or that may be required to be published
22 for the information of the people regarding any and all
23 details of the financial administration of such public
24 affairs. The chief inspector shall also formulate, prescribe
25 and install a system of accounting for the civil accounts
26 of the justices of the peace, which shall exhibit true ac-

27 counts and detailed statements of the services rendered,
28 the name and address of the persons for whom rendered,
29 the charges made and collected therefor and such other
30 information as may be necessary to identify the trans-
31 action.

32 The system of accounting prescribed and formulated
33 by the chief inspector and any changes made therein from
34 time to time shall, before becoming operative, be approved
35 by the board of public works.

Sec. 3. Separate Accounts for Different Appropriations.

2 —Separate accounts shall be kept for every appropriation
3 or fund made or levied by a local governing body, show-
4 ing the date and manner of each payment made out of the
5 funds provided by such appropriation or levy, the name,
6 address and vocation of each person, organization, cor-
7 poration or association to whom paid, and for what pur-
8 pose paid. Separate accounts shall be kept for each de-
9 partment, public improvement, undertaking, institution
10 and public service industry under the jurisdiction of every
11 local governing agency; and all service rendered by or
12 property transferred from one department, public im-
13 provement, undertaking, institution or public service in-
14 dustry to another shall be paid for at its true and full
15 value by the department, public improvement, under-
16 taking, institution or public service industry receiving
17 the same; and no department, public improvement, under-
18 taking, institution or public service industry shall benefit
19 in any financial manner whatever by an appropriation
20 or fund made for the support of another department,
21 public improvement, undertaking, institution or public
22 service industry. All unexpended balances or appropria-
23 tions shall be transferred to the credit of the fund from
24 which originally appropriated or levied whenever the
25 account with an appropriation is closed.

Sec. 5. Reports to and by Chief Inspector.—The chief

2 inspector shall require from every local taxing agency
3 financial reports covering a full period of each fiscal year,
4 in accordance with the forms and methods prescribed by
5 him, which shall be uniform for all accounts of the same
6 class. Such reports shall contain an accurate statement

7 in summarized form of all collections made by or receipts
8 received by the officers from all sources, all accounts due
9 the public but not collected, and of all expenditures for
10 every purpose, and by what authority authorized, and
11 also: (a) A statement of all costs of ownership and opera-
12 tion and of all income of each and every public service
13 industry owned and operated by a municipality; (b) a
14 statement of the entire public debt of every taxing body
15 to which power has been delegated by the state to create
16 a public debt, showing the purpose for which each item of
17 the debt was created, the provisions made for the pay-
18 ment of the debt, together with such other information
19 as may be required by the chief inspector. Such reports
20 shall be certified as to their correctness by the chief in-
21 spector or by his assistant appointed by him for the pur-
22 pose. Their substance shall be published in a biennial
23 volume of comparative statistics that shall be issued for
24 each class of accounts at the expense of the state as a
25 public document, and shall be submitted by the chief
26 inspector to the governor for transmittal to the Legis-
27 lature.

Sec. 6. *Accounts and Reports by Local Public Officers.*—

2 All local governing officers, departments, boards and com-
3 missions shall keep their financial accounts in records
4 and forms approved or prescribed by the chief inspector
5 of public offices and shall furnish promptly to the chief
6 inspector of public offices such information and reports
7 as may be requested. Refusal or neglect to comply with
8 the requirements of this section shall subject the person
9 offending to removal from office. In case an officer or
10 employee of a local governing agency collects or receives
11 funds for the account of a local governing agency of
12 which he is not an officer or employee, he shall remit to
13 the proper officer of the local governing agency for whose
14 account the collection was made or payment was received,
15 the full amount collected or received for the account of
16 such local governing agency.

Sec. 7. *Examination into Affairs of Local Public Officers.*

2 —The chief inspector shall have power by himself, or by
3 any person appointed by him to perform the service, to
4 examine into all financial affairs of every local govern-

5 mental office or agency (including district offices) and
6 shall make such an examination at least once a year, if
7 practicable. On every such examination inquiry shall be
8 made as to the financial conditions and resources of the
9 agency having jurisdiction over the appropriations and
10 levies disbursed by the office, whether the requirements
11 of the constitution and statutory laws of the state and the
12 ordinances and orders of the agency have been properly
13 complied with, and also inquire into the methods and
14 accuracy of the accounts, and as to such other matters of
15 audit and accounting as the chief inspector may prescribe.
16 He or any of his assistants shall have power and may exer-
17 cise all the authority to issue subpoenas and compulsory
18 process, and to direct the service thereof by any constable
19 or sheriff, to compel the attendance of witnesses and the
20 production of books and papers before him at any desig-
21 nated time and place, selected in their respective county,
22 and to administer oaths. If any person shall refuse to ap-
23 pear before said chief inspector or his assistants when re-
24 quired so to do, or shall refuse to testify in regard to any
25 matter or refuse to produce any books or papers in his
26 possession or under his control, he shall be guilty of a mis-
27 demeanor, and, upon conviction thereof shall be fined not
28 more than one hundred dollars and imprisoned not more
29 than six months. Wilful false swearing in such examina-
30 tions shall be punishable as such. A report of each exami-
31 nation shall be made in duplicate, one copy to be filed in
32 the office of the state tax commissioner and one in the
33 auditing department of the agency. If any such examina-
34 tion discloses misfeasance, malfeasance or nonfeasance in
35 office on the part of any public officer or employee, a
36 certified copy of the report shall be filed with the proper
37 legal authority of the agency for such legal action as is
38 proper in the premises. Refusal, neglect, or failure on the
39 part of the proper legal authority of the agency to take
40 prompt and efficient legal action to carry into effect the
41 findings of any such examination, or to prosecute the
42 same to a final conclusion, shall give to the chief inspector
43 the right to institute the necessary proceedings, or to
44 participate therein, and to prosecute the same in any of
45 the courts of the state, to a final conclusion.

Sec. 8. *Cost of Services of Chief Inspector; Revolving*

2 *Fund.*—The cost of any service or act performed by the
3 chief inspector under the provisions of this article as to
4 any county or district office, officer or institution, shall
5 be paid by the county court of the county; the cost thereof
6 as to any board of education shall be paid by such board;
7 the cost thereof as to any municipal corporation shall be
8 paid by the authorities thereof: *Provided*, That in mu-
9 nicipalities in which the total revenue from all taxes does
10 not exceed the sum of two thousand dollars annually,
11 such cost including the per diem and all actual costs and
12 expenses of such services shall not exceed the sum of
13 sixty dollars. The cost of this service shall be the ac-
14 tual cost and expense of the service performed, including
15 transportation, hotel, meals, materials, per diem compen-
16 sation of deputies, assistants, clerical help and such other
17 costs as may be necessary to enable them to perform the
18 services required. The chief inspector shall render to the
19 agency liable for such cost a statement thereof as soon
20 after the same was incurred as practicable, and it shall
21 be the duty of such agency to allow the same, and cause
22 it to be paid promptly in the manner that other claims
23 and accounts are allowed and paid, and such total amount
24 shall constitute a debt against the local agency due the
25 state. Whenever there is in the state treasury a sum of
26 money due any such county court, board of education or
27 municipality from any source, upon the application of the
28 chief inspector, the same shall be at once applied on the
29 debt aforesaid against the county court, board of educa-
30 tion or municipality, and the fact of such application of
31 such fund shall be reported by the auditor to the said
32 county court, board of education or municipality, which
33 report shall be a receipt for the amount therein named.
34 All money received by the chief inspector from this source
35 shall be paid into the state treasury, shall be deposited to
36 the credit of an account to be known as chief inspector's
37 fund and shall be expended only for the purpose of cov-
38 ering the cost of such services, unless otherwise directed
39 by the Legislature. The cost of any such examination,
40 service or act by the chief inspector made necessary, or

41 such part thereof as was made necessary, by the wilful
42 fault of any officer or employee, may be recovered by the
43 chief inspector from such person, on motion, on ten days'
44 notice in any court having jurisdiction.

45 For the purpose of permitting payments to be made at
46 definite periods to deputy inspectors and assistants for
47 per diem compensation and expenses, there is hereby cre-
48 ated a revolving fund for the chief inspector's office. The
49 fund shall be accumulated and administered as follows:

50 (1) There shall be appropriated from the state fund
51 general revenue the sum of twenty-five thousand dollars
52 to be transferred to this fund to create a revolving fund
53 which, together with other payments into this fund as
54 provided in this article, shall constitute a fund to defray
55 the cost of this service.

56 (2) Payments received for the cost of services of the
57 chief inspector's office shall be deposited into this revolv-
58 ing fund, which shall be known as the chief inspector's
59 fund.

60 (3) Any appropriations made to this fund shall not be
61 deemed to have expired at the end of any fiscal period.

Sec. 9-a. *Public Inspection of Reports.*—All reports of
2 examinations and audits of public offices made in accord-
3 ance with the provisions of section seven of this article,
4 and the copies thereof, when filed in the office of the chief
5 inspector of public offices or in the office of the state tax
6 commissioner, shall be public documents and shall be
7 available for public inspection.

Sec. 10. *Statutory References to Audits or Examinations*
2 *by Tax Commissioner, Inspector or Supervisor of Public*
3 *Offices.*—Whenever any statute refers to an audit or ex-
4 amination of a state department or agency by the tax
5 commissioner or inspector and/or supervisor of public
6 offices, if within the prescribed functions and duties of
7 the legislative auditor in making post audit of such state
8 department or agency, and in order to avoid duplication,
9 the reference shall be deemed to be made to the legislative
10 auditor to whom such functions and duties have been
11 transferred.

CHAPTER 130

(House Bill No. 186—By Mr. Peters and Mr. Speaker, Mr. Singleton)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article six, creating a civil service system for the state of West Virginia.

Article 6. Civil Service System.

Section

1. General purpose.
2. Classified service; exceptions therefrom.
3. State personnel department generally; transfer of personnel, funds, equipment, etc.
4. Selection and appointment of director of personnel; qualifications and removal.
5. Merit system council transformed into civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.
6. Duties of commission generally.
7. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests.
8. Rules of commission.
9. Duty to furnish facilities for department use.
10. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.
11. Status of present employees.
12. Certification of pay rolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of pay roll.
13. Appeals by employees to commission; hearings; review by court of appeals.
14. Records of the state personnel department.
15. Services to political subdivisions; cooperation for agencies for other jurisdictions.
16. Retirement system.
17. Oaths, testimony, and the production of records; immunity from suit.
18. Refusal to testify.
19. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.
20. Unlawful acts prohibited.
21. Penalties.
22. Appropriations; cost of administering article; acceptance of grants, contributions, etc.
23. Separability.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be repealed and a new article six be enacted in lieu thereof to read as follows:

Section 1. *General Purpose.*—The general purpose of this article is to attract to the service of this state personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions in the state service shall be made solely on the basis of merit and fitness, except as hereinafter specified.

Sec. 2. *Classified Service; Exceptions Therefrom.*—(a) The classified service to which this law shall apply shall comprise all positions covered by the present merit system at the effective date of this article and the following positions in the state tax commission and the public service commission: Procurement officer; supervisor of field duties; supervisor, supervisor I and field auditors of the cigarettes, soft drinks, general license and store license division; supervisor and field auditors of the accounting division; supervisor and research analysts of the public utility division; supervisor of the assessment and levy division; supervisor of the cashier's division; supervisor, senior accountant and auditors of the consumers' sales tax division; the supervisor, assistant supervisor and auditors of the gasoline excise division; supervisor and assistant division director of the inheritance tax division; supervisor, revenue examiners and field auditors of the business and occupation tax division; supervisor and field appraisers of the property evaluation division; the supervisor of the property evaluation assessment and equalization division; supervisor of the tabulation division; chief and assistant chief of the rate and tariff department; chief accountant, assistant chief accountant, and senior accountants of the accounting department; chief engineer, senior engineers, senior gasoline engineers, senior electrical engineers and staff engineers of the engineering department; and assistant director and rate analysts of the motor carrier department.

29 The governor may, by executive order, with the written
30 consent of the civil service commission and the appointing
31 authority concerned, add to the list of positions in the clas-
32 sified service, but such additions shall not include the
33 following:

34 (1) The state Legislature and other officers elected by
35 popular vote and persons appointed to fill vacancies in
36 elective offices.

37 (2) Members of boards and commissions and heads of
38 departments appointed by the governor or such heads of
39 departments selected by commissions or boards when ex-
40 pressly exempt by law or board order.

41 (3) One principal assistant or deputy and one private
42 secretary for each board or commission or head of a de-
43 partment elected or appointed by the governor or Legis-
44 lature, other than the civil service commission and the
45 director of personnel.

46 (4) Not more than fifteen employees in the office of the
47 governor.

48 (5) Judges, referees, receivers, jurors and notaries
49 public.

50 (6) The secretaries and clerks of each judge of a court
51 of record.

52 (7) Patients or inmates employed in state institutions.

53 (8) Persons employed in a professional or scientific
54 capacity to make or conduct a temporary and special in-
55 quiry, investigation or examination on behalf of the Legis-
56 lature or a committee thereof, an executive department
57 or by authority of the governor.

58 (9) All employees assigned to the executive mansion.

59 (10) Janitors and laborers employed by any agency.

60 (11) Managers and clerks of liquor stores.

61 (12) Superintendent, county maintenance of roads, and
62 all personnel under his supervision.

63 (13) Part-time professional personnel engaged in pro-
64 fessional services without administrative duties and per-
65 sonnel employed for less than ninety working days a year.

66 (14) All clerical employees who are not under the pres-
67 ent merit system and whose jobs do not require special
68 knowledge or skill and training in the operation of busi-
69 ness machines.

70 All excepted positions to be termed unclassified service.
71 Nothing herein shall be construed as precluding the
72 appointing authorities from filling any position in the
73 manner in which positions in the classified service are
74 filled.

Sec. 3. *State Personnel Department Generally; Transfer of Personnel, Funds, Equipment, etc.*—(a) There shall
2 be in the state government a state personnel department,
3 the executive head of which shall be a director of per-
4 sonnel. The employees of the present merit system office,
5 with the exception of the merit system supervisor, are
6 hereby transferred into the office of the director of per-
7 sonnel. Their services shall be considered continuous.
8 In addition, all funds, equipment, supplies, personnel and
9 property records, or anything of value now in the posses-
10 sion of the merit system council are hereby transferred
11 to the state personnel department.
12

13 (b) In the department there shall be a civil service
14 commission of three members, with the powers and duties
15 hereinafter enumerated.

Sec. 4. *Selection and Appointment of Director of Personnel; Qualifications and Removal.*—After selection
2 through open competitive examination, then upon recom-
3 mendation of the civil service commission, the governor
4 shall appoint a director of personnel, who shall be experi-
5 enced in the field of personnel administration, and who is
6 in known sympathy with the application of merit princi-
7 ples in public employment. The selection and appoint-
8 ment must be in conformity with civil service rules. The
9 present merit system supervisor may be the appointee.
10 The director of personnel may be removed by the civil
11 service commission for cause only after he has been pre-
12 sented in writing with the reasons for his removal. He
13 shall be given an opportunity, not less than fifteen days,
14 to answer any charges either in writing or upon his re-
15 quest to be heard by the commission. The statement of
16 reasons and answer or transcript of hearing shall be filed
17 with the secretary of state as a public record. The de-
18 cision of the commission, after a hearing, shall be final
19 and not subject to appeal.
20

2 Sec. 5. *Merit System Council Transformed into Civil*
3 *Service Commission; Qualifications of Members; Vacan-*
4 *cies; Appointment and Terms of Members; Removal;*
5 *Compensation; Chairman; Meetings; Advisory Board.—*

6 (a) The present merit system council shall be trans-
7 formed into the civil service commission. The members
8 of the commission shall be persons in sympathy with the
9 application of merit principles to public employment. No
10 member of the commission shall be a member of any local,
11 state, or national committee of a political party or an
12 officer or member of a committee in any partisan political
13 club or organization or shall hold, or be a candidate for,
14 any paid public office. Not more than two members of the
15 same political party shall serve on the commission at the
16 same time.

17 (b) Vacancies in the present merit system council
18 now being transferred by this article into the civil serv-
19 ice commission occur June thirtieth, one thousand nine
20 hundred sixty-one, June thirtieth, one thousand nine
21 hundred sixty-two and June thirtieth, one thousand nine
22 hundred sixty-three. The members of the commission
23 shall be appointed by the governor by and with the advice
24 and consent of the senate. On the first vacancy, one mem-
25 ber shall be appointed for a term of four years, on the
26 second vacancy, the member shall be appointed for a term
27 of five years, and on the third vacancy, for a term of six
28 years. Thereafter, each member shall be appointed for a
29 term ending six years from the date of expiration of the
30 term for which his predecessor was appointed, except
31 that a person appointed to fill a vacancy occurring prior
32 to the expiration of such term shall be appointed for
33 the remainder of the term. Each member of the com-
34 mission shall hold office until his successor is appointed
35 and qualified.

36 (c) A member of the commission may be removed by
37 the governor only for cause, after being given a copy of
38 charges against him and an opportunity to be heard pub-
39 licly on such charges before the governor. A copy of the
40 charges and a transcript of the record of the hearing shall
41 be filed with the secretary of state. The decision of the

41 governor, after a hearing, shall be final and not subject to
42 appeal.

43 (d) Members of the commission shall each be paid
44 twenty-five dollars for each day devoted to the work of
45 the commission, but not more than six hundred dollars in
46 any one year. They shall be entitled to reimbursement
47 for necessary traveling and other expenditures necessi-
48 tated by their official duties.

49 (e) The commission shall elect one of its members
50 chairman. It shall meet at such time and place as shall be
51 specified by call of the chairman or the directors. At
52 least one meeting shall be held in each month. All meet-
53 ings shall be open to the public. Notice of each meeting
54 shall be given in writing to each member by the director
55 at least three days in advance of the meeting. Two mem-
56 bers shall constitute a quorum for the transaction of
57 business.

58 (f) There is hereby created an advisory board to ad-
59 vise the commission and the director in the administra-
60 tion of this article. The advisory board shall consist of
61 the appointing authorities from all agencies having em-
62 ployees in the classified service.

Sec. 6. *Duties of Commission Generally.*—In addition
2 to the duties expressly set forth elsewhere in this article,
3 the commission shall:

4 (1) Represent the public interest in the improvement
5 of personnel administration in the state service.

6 (2) Advise the governor and the director on problems
7 concerning personnel administration.

8 (3) Foster the interest of institutions of learning and
9 of industrial, civic, professional and employee organiza-
10 tions in the improvement of personnel standards in the
11 state service.

12 (4) Make any investigation which it may consider
13 desirable concerning the administration of personnel in
14 the state service, and make recommendations to the di-
15 rector with respect thereto.

16 (5) Make an annual report and special reports and
17 recommendations to the governor.

18 (6) Approve the budget as prepared by the director

19 for administration of this article before submission to the
20 director of the budget.

Sec. 7. *Duties of Director Generally; Designating Em-
2 ployee to Act in Absence of Director, Assistants in Prep-
3 aration and Rating of Tests.*—(a) The director, as execu-
4 tive head of the department, shall direct and supervise
5 all its administrative and technical activities. In addition
6 to the duties imposed upon him elsewhere in this article,
7 it shall be his duty:

8 (1) To apply and carry out this article and the rules
9 adopted thereunder.

10 (2) To attend meetings of the commission and to act
11 as its secretary and keep minutes of its proceedings.

12 (3) To establish and maintain a roster of all employees
13 in the state civil service, in which there shall be set forth,
14 as to each employee, the class title, pay or status, and
15 other pertinent data.

16 (4) To appoint such employees of the department and
17 such experts and special assistants as may be necessary
18 to carry out effectively the provisions of this law.

19 (5) To foster and develop, in cooperation with ap-
20 pointing authorities and others, programs for the improve-
21 ment of employee effectiveness, including training, safety,
22 health, counseling and welfare.

23 (6) To make available to the public information about
24 vacancies in the classified service and to strive constantly
25 to attract to the career service of this state people of the
26 highest ability.

27 (7) To investigate from time to time the operation and
28 effect of this law and of the rules made thereunder and
29 to report his findings and recommendations to the com-
30 mission and to the governor.

31 (8) To make an annual report regarding the work of
32 the department, and such special reports as he may con-
33 sider desirable, to the commission.

34 (9) To prepare the annual budget for the department
35 of personnel and when approved by the commission, sub-
36 mit it to the director of the budget.

37 (10) To perform any other lawful acts which he may
38 consider necessary or desirable to carry out the purposes
39 and provisions of this article.

40 (b) In the event of the absence of the director or his
41 inability from any cause to discharge the powers and
42 duties of his office, the commission may from time to time
43 designate in writing an employee of the department to
44 act for him. In such case, the powers and duties of the
45 director shall devolve upon such employee designated by
46 the commission.

47 (c) The director may designate appropriate persons,
48 including officers and employees in the state service, to
49 assist in the preparation and rating of tests. An appoint-
50 ing authority shall excuse any employee in his division
51 from his regular duties for the time required for his work
52 as an examiner. Such officers and employees shall not be
53 entitled to extra pay for further services as examiners but
54 shall be entitled to reimbursement for necessary traveling
55 and other expenses.

Sec. 8. *Rules of Commission.*—The present merit system
2 council rules shall be transformed into the temporary
3 rules of the civil service commission and shall continue
4 in effect until the director of personnel prepares and sub-
5 mits to the civil service commission new rules for the
6 classified service.

7 Such new rules shall be filed and made effective in con-
8 formity with article two, chapter five of this code after
9 public notice and public hearing. Amendments thereto
10 may be made in the same manner. The new rules shall
11 provide:

12 (1) For the preparation, maintenance and revision of a
13 position classification plan for all positions in the classified
14 service, based upon similarity of duties performed and re-
15 sponsibilities assumed, so that the same qualifications may
16 reasonably be required for and the same schedule of pay
17 may be equitably applied to all positions in the same class.
18 After such classification has been approved by the com-
19 mission, the director shall allocate the position of every
20 employee in the classified service to one of the classes in
21 the plan. Any employee affected by the allocation of a
22 position to a class shall, after filing with the director of
23 personnel a written request for reconsideration thereof
24 in such manner and form as the director may prescribe,
25 be given a reasonable opportunity to be heard thereon by

26 the director. The interested appointing authority shall be
27 given like opportunity to be heard.

28 (2) For a pay plan for all employees in the classified
29 service, after consultation with appointing authorities and
30 the state fiscal officers, and after a public hearing held
31 by the commission. Such pay plan shall become effective
32 only after it has been approved by the governor after sub-
33 mission to him by the commission. Amendments to the
34 pay plan may be made in the same manner. Each em-
35 ployee shall be paid at one of the rates set forth in the
36 pay plan for the class of position in which he is employed.
37 The principle of equal pay for equal work in the several
38 agencies of the state government shall be followed in the
39 pay plan as established hereby.

40 (3) For open competitive examinations to test the rela-
41 tive fitness of applicants for the respective positions. Such
42 examinations need not be held until after the rules have
43 been adopted, the service classified and a pay plan estab-
44 lished, but shall be held not later than one year after this
45 article takes effect. Such examinations shall be announced
46 publicly at least fifteen days in advance of the date fixed
47 for the filing of applications therefor, and may be adver-
48 tised through the press, radio and other media. The direc-
49 tor may, however, in his discretion, continue to receive
50 applications and examine candidates long enough to as-
51 sure a sufficient number of eligibles to meet the needs of
52 the service; and may add the names of successful candi-
53 dates to existing eligible lists in accordance with their re-
54 spective ratings.

55 Veterans who present proof of at least one year's hon-
56 orable service to the United States in either of the World
57 Wars or the Korean War shall be entitled to an additional
58 five points on any examination and disabled veterans shall
59 be entitled to an additional ten points: *Provided, however,*
60 That no such additions shall be made where a veteran
61 fails to pass the examination.

62 (4) For promotions which shall give appropriate con-
63 sideration to the applicant's qualifications, record of per-
64 formance and his score on written examination, when such
65 examination is practicable. In filling vacancies an effort
66 should be made to achieve a balance between promotion

67 from within the service and the introduction into the serv-
68 ice of qualified new employees. An advancement in rank
69 or grade or an increase in salary beyond the maximum
70 fixed for the class shall constitute a promotion.

71 (5) For the establishment of eligible lists for appoint-
72 ment and promotion, upon which lists shall be placed the
73 names of successful candidates in the order of their rela-
74 tive excellence in the respective examinations. Eligibility
75 for appointment from any such list shall continue not
76 longer than three years. An appointing authority must
77 make his selection from the top five names on the appro-
78 priate list of eligibles.

79 (6) For the rejection of candidates or eligibles who fail
80 to comply with reasonable requirements in regard to such
81 factors as age, physical condition, character, training and
82 experience, who are addicted to alcohol or narcotics, or
83 who have attempted any deception or fraud in connection
84 with an examination, or where in the judgment of the
85 commission there is reasonable doubt of the loyalty of
86 the candidate or eligible to the nation.

87 (7) For a period of probation not to exceed one year
88 before appointment or promotion may be made complete.

89 (8) For provisional employment without competitive
90 examination when there is no appropriate eligible list
91 available. No such provisional employment shall continue
92 longer than six months, nor shall successive provisional
93 appointments be allowed, except during the first year
94 after the effective date of this article in order to avoid stop-
95 page of orderly conduct of the business of the state.

96 (9) For keeping records of performance of all em-
97 ployees in the classified service, which service records may
98 be considered in determining salary increases and de-
99 creases provided in the pay plan; as a factor in promo-
100 tion tests; as a factor in determining the order of layoffs
101 because of lack of funds or work and in reinstatement;
102 and as a factor in demotions, discharges and transfers.

103 (10) For layoffs by reason of lack of funds or work,
104 or abolition of a position, or material change in duties or
105 organization, and for reemployment of employees so laid
106 off, giving consideration in both layoffs and re-employ-
107 ment to performance record and seniority in service.

108 (11) For discharge or reduction in rank or grade only
109 for cause of employees in the classified service. Discharge
110 or reduction of these employees shall take place only after
111 the person to be discharged or reduced has been presented
112 with the reasons for such discharge or reduction stated in
113 writing, and has been allowed a reasonable time to reply
114 thereto in writing, or upon request to appear personally
115 and reply to the head of the department or his deputy.
116 The statement of reasons and the reply shall be filed as a
117 public record with the director.

118 (12) For such other rules and administrative regula-
119 tions, not inconsistent with this article, as may be proper
120 and necessary for its enforcement.

121 The commission and the director may include in the
122 rules provided for in this article such provisions as are
123 necessary to conform to regulations and standards of any
124 federal agency governing the receipt and use of federal
125 grants-in-aid by any state agency, anything in this article
126 to the contrary notwithstanding. The commission and the
127 director shall see that rules and practices meeting such
128 standards are in effect continuously after the effective
129 date of this article.

Sec. 9. *Duty to Furnish Facilities for Department Use.*—

2 All officers and employees of the state and of municipali-
3 ties and political subdivisions of the state shall allow the
4 department the reasonable use of public buildings under
5 their control, and furnish heat, light and furniture, for
6 any examination, hearing or investigation authorized by
7 this article. The department shall pay to a municipality
8 or political subdivision the reasonable cost of any such
9 facilities furnished by it.

Sec. 10. *Duties of State Officers and Employees; Legal
2 Proceedings to Secure Compliance with Article and Rules.*

3 —All officers and employees of the state shall comply
4 with and aid in all proper ways in carrying out the pro-
5 visions of this law and the rules, regulations and orders
6 thereunder. All officers and employees shall furnish any
7 records or information which the director or the commis-
8 sion may request for any purpose of this article. The di-
9 rector may institute and maintain any action or proceed-
10 ing at law or in equity that he considers necessary or

11 appropriate to secure compliance with this article and
12 the rules and orders thereunder.

Sec. 11. *Status of Present Employees.*—(a) Employees
2 under the present merit system at the effective date of this
3 article: No employee shall lose any rights gained by ap-
4 pointment under the present merit system now being
5 formulated into the civil service by this article. Employ-
6 ees who have gained permanent status under the present
7 system will not be subject to further examination, except
8 when they wish to qualify for promotion, and will con-
9 tinue in the position they hold. Their rights as per-
10 manent employees shall be continuous. Employees hold-
11 ing provisional appointments under the present merit
12 system must qualify for permanent appointments under
13 competitive examination.

14 (b) Employees holding positions included under classi-
15 fied service by this article or placed under the same by
16 future action shall be required to take qualifying tests
17 prescribed by the director.

18 Those employees who fail to qualify shall be dismissed
19 from their positions within thirty days after establish-
20 ment of an eligible list for their respective positions.
21 Nothing in this article shall preclude the reclassification or
22 reallocation as provided by this law of any position.

Sec. 12. *Certification of Pay Rolls; Failure of Appoint-
2 ing Authority to Comply with Order of Commission;
3 Wrongfully Withholding Certification of Pay Roll.*—(a)
4 No state disbursing or auditing officer shall make or ap-
5 prove or take any part in making or approving any pay-
6 ment for personal service to any person holding a position
7 in the classified service unless the payroll voucher or ac-
8 count of such pay bears the certification of the director,
9 or of his authorized agent, that the persons named therein
10 have been appointed and employed in accordance with the
11 provisions of this law and the rules, regulations and orders
12 thereunder. The director may for proper cause withhold
13 certification from an entire pay roll or from any specific
14 item or items thereon. The director may, however, pro-
15 vide that certification of pay rolls may be made once every
16 six months, and such certification shall remain in effect

17 except in the case of any officer or employee whose status
18 has changed after the last certification of his pay roll. In
19 the latter case no voucher for payment of salary to such
20 employee shall be issued or payment of salary made with-
21 out further certification by the director.

22 (b) If an appointing authority fails to comply with an
23 order of the commission after a hearing, he shall be per-
24 sonally liable to the appealing employee for any salary
25 due from the time of the final order of reinstatement by
26 the commission.

27 (c) If the director wrongfully withholds certification
28 of the payroll voucher or account of any employee, such
29 employee may maintain a proceeding in the courts to com-
30 pel the director to certify such payroll voucher or account.

Sec. 13. *Appeals by Employees to Commission; Hear-
2 ings; Review by Court of Appeals.*—Any employee in the
3 classified service who is dismissed or demoted after com-
4 pleting his probationary period of service or who is
5 suspended for more than thirty days in any one year, may,
6 within thirty days after such dismissal, demotion or
7 suspension, appeal to the commission for review thereof.
8 Upon such review, both the appealing employee and the
9 appointing authority whose action is reviewed shall have
10 the right to be heard publicly and to present evidentiary
11 facts. At the hearing of such appeals, technical rules of
12 evidence shall not apply. If the commission finds that the
13 action complained of was taken by the appointing au-
14 thority without good cause, the employee shall be rein-
15 stated to his former position or a position of like status and
16 pay, without loss of pay for the period of his suspension.
17 When any employee is dismissed and not reinstated after
18 such appeal, the commission in its discretion may direct
19 that his name be placed on an appropriate re-employment
20 list, for employment in any similar position other than
21 the one from which he has been removed. Any final
22 action or decision taken or made hereunder shall be
23 subject to review by the supreme court of appeals, if
24 appeal is made within sixty days of the action or decision
25 complained of.

Sec. 14. *Records of the State Personnel Department.*—
2 The records of the department, except such records as the

3 rules may properly require to be held confidential for
4 reasons of public policy, shall be public records and shall
5 be open to public inspection, subject to reasonable regu-
6 lations as to the time and manner of inspection which may
7 be prescribed by the director.

Sec. 15. *Services to Political Subdivisions; Cooperation*
2 *for Agencies for Other Jurisdictions.*—(a) Subject to the
3 approval of the commission the director may enter into
4 agreements with any municipality or other political sub-
5 division of the state to furnish services and facilities of
6 the department to such municipality or political sub-
7 division in the administration of its personnel on merit
8 principles. Any such agreement shall provide for the
9 reimbursement to the state of the reasonable cost of the
10 services and facilities furnished, as determined by the
11 director. All municipalities and political subdivisions of
12 the state are hereby authorized to enter into such agree-
13 ments. Subject to the approval of the commission, the
14 director may enter into an agreement with the state de-
15 partment of health for the inclusion of personnel of local
16 health departments under the civil service system estab-
17 lished by this article.

18 (b) The director may cooperate with governmental
19 agencies for other jurisdictions charged with personnel
20 administration in conducting joint tests and establishing
21 joint lists from which eligibles shall be certified for ap-
22 pointment in accordance with the provisions of this
23 article.

Sec. 16. *Retirement System.*—The director will submit to
2 the governor recommendations concerning the advisability
3 and practicability of establishing an actuarially sound re-
4 tirement and pension system for persons holding positions
5 in the service.

Sec. 17. *Oaths, Testimony and the Production of Rec-*
2 *ords; Immunity from Suit.*—The commission, each mem-
3 ber of the commission and the director shall have power to
4 administer oaths, subpoena witnesses and compel the pro-
5 duction of books and papers pertinent to any investiga-
6 tion or hearing authorized by this article. Any person who
7 shall fail to appear in response to a subpoena or to answer

8 any question or produce any books or papers pertinent
9 to any such investigation or hearing or who shall know-
10 ingly give false testimony therein shall be guilty of a
11 misdemeanor. Immunity from civil suit is hereby granted
12 for all relevant evidence offered at commission hearings.

Sec. 18. *Refusal to Testify.*—If any employee in the state
2 service shall wilfully refuse or fail to appear before any
3 court or judge, any legislative committee, or any officer,
4 board or body authorized to conduct any hearing or in-
5 quiry, or having appeared shall refuse to testify or an-
6 swer any question relating to the affairs or government
7 of the state or the conduct of any state officer or em-
8 ployee on the ground that his testimony or answers would
9 tend to incriminate him, or shall refuse to accept a grant of
10 immunity from prosecution on account of any matter
11 about which he may be asked to testify at any such hear-
12 ing or inquiry, he shall forfeit his office or position and
13 shall not be eligible thereafter for appointment to any
14 position in the state service.

Sec. 19. *Favoritism or Discrimination Because of Political or Religious Opinions, Affiliations or Race; Political Activities Prohibited.*—(a) No person shall be appointed
2 or promoted to, or demoted or dismissed from any position
3 in the classified service or in any way favored or discrim-
4 inated against with respect to such employment because
5 of his political or religious opinions or affiliations or race;
6 but nothing herein shall be construed as precluding the
7 dismissal of any employee who may be engaged in sub-
8 versive activities or found disloyal to the nation.

11 (b) No person shall seek or attempt to use any politi-
12 cal endorsement in connection with any appointment in
13 the classified service.

14 (c) No person shall use or promise to use, directly or
15 indirectly, any official authority or influence, whether
16 possessed or anticipated, to secure or attempt to secure
17 for any person an appointment or advantage in appoint-
18 ment to a position in the classified service, or an increase
19 in pay or other advantage in employment in any such
20 position, for the purpose of influencing the vote or
21 political action of any person, or for any consideration.

22 (d) No employee in the classified service or member of
23 the commission or the director shall, directly or indirectly,
24 pay or promise to pay any assessment, subscription or con-
25 tribution, or perform any service for any political party, or
26 solicit or take any part in soliciting any such assessment,
27 subscription, contribution or service. No person shall
28 solicit any such assessment, subscription, contribution or
29 service of any employee in the classified service.

30 (e) No employee in the classified service shall be a
31 member of any national, state or local committee of a
32 political party, or an officer or member of a committee
33 of a partisan political club, or a candidate for nomination
34 or election to any paid public office, or shall take any part
35 in the management or affairs of any political party or in
36 any political campaign, except to exercise his right as a
37 citizen privately to express his opinion and to cast his
38 vote.

39 (f) Any officer or employee in the state service who
40 violates any of the foregoing provisions of this section
41 shall forfeit his office or position, and for one year shall
42 be ineligible for any office or position in the state service.

Sec. 20. *Acts Prohibited.*—(a) No person shall make
2 any false statement, certificate, mark, rating or report
3 with regard to any test, certification or appointment made
4 under any provisions of this article or in any manner
5 commit or attempt to commit any fraud preventing the
6 impartial execution of this article and the rules.

7 (b) No person shall, directly or indirectly, give, render,
8 pay, offer, solicit or accept any money, or other valuable
9 consideration for or on account of any appointment, pro-
10 posed appointment, promotion or proposed promotion to,
11 or any advantage in, a position in the classified service.

12 (c) No employee of the department, examiner, or
13 other person shall defeat, deceive or obstruct any person
14 in his right to examination, eligibility, certification or
15 appointment under this law, or furnish to any person any
16 special or secret information for the purpose of affecting
17 the rights or prospects of any person with respect to
18 employment in the classified service.

Sec. 21. *Penalties.*—(a) Any person who wilfully vio-

2 lates any provision of this article or of the rules shall be
3 guilty of a misdemeanor, and shall, upon conviction, be
4 punished by a fine of not less than one hundred dollars
5 nor more than five hundred dollars or by imprisonment
6 in the county jail for a period not to exceed one year,
7 or both, in the discretion of the court. Jurisdiction under
8 this section shall be in a court of record exercising criminal jurisdiction within the county wherein the offense is
9 committed.
10

11 (b) Any person who is convicted of a misdemeanor
12 under this article shall, for a period of five years, be ineligible for appointment to or employment in a position in
13 the state service, and if he is an officer or employee of the
14 state, shall forfeit his office or position.
15

Sec. 22. *Appropriations; Cost of Administering Article; Acceptance of Grants, Contributions, etc.*—(a) Appropriations shall be made from the general fund to the state
2 personnel department to meet the estimated pro rata
3 share of the cost of administering the provisions of this
4 article for departments, commissions, boards or agencies
5 which receive their sole support from the general fund or
6 other state funds.
7
8

9 (b) The director shall maintain accurate records reflecting the cost of administering the provisions of this
10 article. At the close of each quarter-year period he shall
11 summarize the cost and shall bill each department, commission, board or agency which receives support from the
12 federal government for a pro rata share of the administrative cost based on the relationship between the quarterly-average number of employees in the service of such
13 department, commission, board or agency and the quarterly-average number of employees in the service of all
14 the departments, commissions, boards and agencies for
15 the appropriate calendar quarter.
16
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21 (c) All departments, commissions, boards or agencies
22 which receive support from the federal government shall
23 include in their budgets sufficient amounts to meet their
24 pro rata shares of the cost of administering this article
25 and shall remit such shares quarterly to the state personnel department in the manner provided by law.
26

27 (d) The department is authorized and *directed to ac-*
28 *cept on behalf of the state any grant or contribution, fed-*
29 *eral or otherwise, made to assist in meeting the cost of*
30 *carrying out the purposes of this article.*

Sec. 23. *Separability.*—If any provision of this article or
2 of any rule, regulation or order thereunder or the appli-
3 cation of such provision to any person or circumstance
4 shall be held invalid the remainder of this article and the
5 application of such provision of this article or of such rule,
6 regulation or order to persons or circumstances other
7 than those as to which it is held invalid shall not be af-
8 fected thereby.

CHAPTER 131

(Com. Sub. for Senate Bill No. 39—Originating in the
Senate Committee on the Judiciary)

[Passed March 7, 1961; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections one through four, article nine, and
sections one through eleven, article thirteen, chapter
twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, and to amend chap-
ter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, by adding thereto a new
article, designated article nine, relating to the establish-
ment in the state government of a department of com-
merce and to its powers and duties.

Article 9. Department of Commerce.

Section

1. Department created; appointment, term and compensation of commissioner; divisions of department; powers and duties of commissioner and division directors.
2. Advisory board; composition; appointment, term and qualification of members; authority generally; meetings and expenses.
3. General powers and duties.
4. Authority of governor.
5. West Virginia industrial and publicity commission and economic development agency abolished; records and equipment transferred; existing contracts; funds.
6. Statutory references.

Be it enacted by the Legislature of West Virginia:

That sections one through four, article nine, and sections one through eleven, article thirteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and 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 nine, to read as follows:

Section 1. *Department Created; Appointment, Term and Compensation of Commissioner; Divisions of Department; Powers and Duties of Commissioner and Division Directors.*—There is hereby created in the state government a department of commerce and the office of commissioner of commerce. The commissioner shall be the chief executive officer of the department and shall be appointed by the governor by and with the advice and consent of the senate for a term of four years, which term shall run concurrently with the term of the governor or until said commissioner's successor is appointed and qualified. The annual compensation of the commissioner shall be fixed by the governor, but not in excess of fourteen thousand dollars. There shall be in the department of commerce a planning and research division, an industrial development division, and a travel development division. Each division shall be headed by a director, who shall be appointed by the commissioner of commerce, to serve at the will and pleasure of the commissioner of commerce. Each division director shall be qualified in his respective field by special training and experience. The director of the planning and research division shall be trained and have experience in the field of state, local or national economic planning. The director of the industrial development division shall be trained and have experience in the field of industrial development. The director of the travel development division shall be trained and have experience in the field of travel development.

The commissioner of commerce shall have control and supervision of the department of commerce and shall be responsible for the work of each of its divisions. Under the control and supervision of the commissioner of com-

33 merce, each division director shall be responsible for the
34 work of his division. The commissioner of commerce shall
35 have the authority to employ such assistants as may be
36 necessary for the efficient operation of the department.

Sec. 2. *Advisory Board; Composition; Appointment,*
2 *Term and Qualification of Members; Authority Generally;*
3 *Meetings and Expenses.*—There is hereby established an
4 advisory board for the department of commerce. The
5 board shall be composed of seven members appointed by
6 the governor for terms of four years and until their suc-
7 cessors are appointed and qualified. There shall be at
8 least one member appointed from each congressional dis-
9 trict, and not more than four members shall be of the
10 same political party. The first two members appointed
11 shall serve for a period of one year; the second two for a
12 period of two years; the next two for a period of three
13 years; and the remaining member for a period of four
14 years. Thereafter, all such appointments shall be made
15 for a term of four years, except that in case of a vacancy,
16 the appointment shall be made to fill the unexpired term.
17 The members of the board shall be citizens and residents
18 of the state, selected with special reference to their train-
19 ing and experience in relation to the principal activities
20 required of the department of commerce, and for their
21 ability and fitness to perform their duties within the
22 purposes of this article. The board shall serve the depart-
23 ment of commerce in an advisory capacity only. It shall
24 have the authority and it shall be its duty:

25 (1) To advise with the commissioner of commerce con-
26 cerning all administrative rules and regulations to be
27 issued by the department.

28 (2) To advise with the commissioner of commerce as
29 to all budget proposals to be submitted to the board of
30 public works.

31 (3) To advise with the commissioner of commerce
32 concerning such studies of economic conditions, travel
33 promotion and industrial development as it may consider
34 appropriate.

35 (4) To advise with the commissioner of commerce on
36 any other matters applicable to the department of com-
37 merce if requested by the governor.

38 The board shall meet at the call of the commissioner of
39 commerce, and each member of the board shall receive his
40 actual and necessary traveling expenses incurred in the
41 performance of his duties.

Sec. 3. *General Powers and Duties of Department.*—The
2 department of commerce shall have the authority and,
3 within the limits of available funds, it shall be its duty to:

4 (1) Investigate, study and undertake ways and means
5 of promoting and encouraging the prosperous develop-
6 ment and protection of the legitimate interests and wel-
7 fare of West Virginia business, industry and commerce,
8 within and outside the state.

9 (2) Serve as a clearing house for industrial problems
10 of the state.

11 (3) Promote and encourage the expansion and de-
12 velopment of markets for West Virginia products.

13 (4) Promote and encourage the location and develop-
14 ment of new business in the state and the maintenance
15 and expansion of existing business.

16 (5) Investigate and study conditions affecting West
17 Virginia business, industry and commerce; collect and
18 disseminate information, and engage in technical studies,
19 scientific investigations, statistical research and education
20 activities necessary or useful for the proper execution of
21 the powers and duties of the department.

22 (6) Plan and develop an effective business information
23 service that will directly assist West Virginia industry
24 and also encourage industries outside the state to use
25 business facilities within the state.

26 (7) Compile, collect and periodically make available
27 scientific indices and other information relating to current
28 business conditions.

29 (8) Encourage and develop commerce with other states
30 and devise methods of removing trade barriers that
31 hamper the free flow of commerce between this and other
32 states, and for these purposes cooperate with interstate
33 commissions engaged in formulating and promoting the
34 adoption of interstate compacts and agreements helpful
35 to business, industry and commerce.

36 (9) Conduct or encourage research designed to further
37 new and more extensive uses of the natural and other

38 resources of the state, with a view to the development of
39 new products and industrial processes.

40 (10) Compile periodically a census of business and
41 industry in the state, in cooperation with other agencies,
42 and analyze and publish the information in such form as
43 to be most valuable to business and industry.

44 (10-a) Compile periodically a census of the crafts,
45 trades, skills and occupations of all adult persons in the
46 state, in cooperation with other agencies, and analyze
47 and publish the information in such form as to be most
48 valuable to business and industry.

49 (11) Study long-range trends and developments in
50 the industries of the state, and analyze the reasons under-
51 lying such trends; study costs and other factors affecting
52 successful operation of businesses within the state.

53 (12) Advertise and publicize the material, economic
54 and other advantages of the state which render it a de-
55 sirable place for business and residence.

56 (13) Collect, compile and distribute information and
57 literature concerning the advantages and attractions of
58 the state, its historic and scenic points of interest, and the
59 highway, transportation and other facilities of the state.

60 (14) Plan and carry out a program of information and
61 publicity designed to attract to West Virginia tourists,
62 visitors and other interested persons from outside the
63 state.

64 (15) Encourage and cooperate with other public and
65 private organizations or groups in their efforts to publicize
66 the attractions and industrial advantages of the state.

67 (16) Accept and expend, without the necessity of ap-
68 propriation by the Legislature, any gift or grant of money
69 made to the department for any or all of the purposes
70 specified in this section.

71 (17) Publish information as an aid to planning on both
72 community and state levels, and provide planning assist-
73 ance and do planning work, including surveys, land use
74 studies, urban renewal plans, technical services and other
75 elements of comprehensive planning programs, in and for
76 any counties, cities, towns and regions; and, for this pur-
77 pose, to accept and utilize any funds, personnel or other
78 assistance made available by the federal government or

79 any of its agencies, or made available from any other
80 source, public or private; and, notwithstanding the pro-
81 visions of any other law and for the purposes of receiving
82 and using federal planning grants for providing urban
83 planning assistance, to serve as the official state planning
84 agency of the state and, to these ends, to enter into
85 agreements or contracts regarding the acceptance or
86 utilization of such funds or assistance for any of the pur-
87 poses authorized by this article.

88 (18) Enter into agreements with federal and state
89 departments or agencies, including those of other states,
90 and any other groups which are in harmony with the
91 purposes of this article, as well as with counties or muni-
92 cipalities of this state, for the promotion of and for the
93 rendering of consultive service with respect to the
94 planning of the county or municipality, and the agree-
95 ment may provide that the county or municipality shall
96 pay part or all of the expense of such service. In this
97 connection, the department of commerce is hereby ex-
98 pressly authorized to participate in the federal planning
99 assistance programs as set forth in the "Federal Housing
100 Act of 1954", as amended, and any subsequent acts, to
101 give planning assistance to municipalities, whatever their
102 size, and metropolitan and regional areas, and any
103 other areas now or hereafter engaged in such activity;
104 and to accept, on behalf of said municipalities, metro-
105 politan and regional areas, funds provided by the govern-
106 ment of the United States in accordance with the afore-
107 said "Federal Housing Act of 1954", as amended. Also,
108 the department of commerce shall be the official state
109 government department to administer and supervise
110 any provisions of a federal area redevelopment act, and
111 is expressly authorized to participate in any federal
112 area redevelopment act within the limits of the funds
113 that are or may be made available for such purposes.
114 The above duties are specifically assigned to the planning
115 and research division within said department of com-
116 merce.

117 (19) Initiate, promote and conduct, or cause to be con-
118 ducted, research designed to further new and more ex-
119 tensive uses and consumption of natural and other re-

120 sources and their by-products; and for such purposes, to
121 enter into contracts and agreements with research labora-
122 tories maintained by educational or endowed institutions
123 in this state, and to expend appropriations to the depart-
124 ment for such purposes.

125 (20) Prepare and maintain a comprehensive plan for
126 the physical, social, and economic development of the
127 state; and the department shall prepare and keep current
128 a proposed long-range program of major state improve-
129 ments relating to the comprehensive development of
130 natural and artificial resources of this state, and shall
131 cooperate with existing federal and state departments
132 and other agencies or groups in perfecting and promoting
133 the aforesaid comprehensive plan.

134 (21) Assist voluntary county or regional councils or
135 groups in order to help effectuate the purposes of this
136 article on a local level.

137 (22) Make recommendations to the governor and the
138 Legislature of any legislation deemed necessary to facili-
139 tate the carrying out of any of the foregoing powers and
140 duties, and to exercise any other power that may be
141 necessary or proper for the orderly conduct of the busi-
142 ness of the department and the effective discharge of the
143 duties of the department.

Sec. 4. *Authority of Governor.*—The governor is hereby
2 authorized to direct by executive order as may be neces-
3 sary to effectuate the purposes of this article, but not
4 inconsistent with the provisions of this article: The trans-
5 fer to the department of commerce of such records and
6 equipment, the performance by the department of such
7 additional functions and duties and the discontinuance of
8 such functions of any other state officer or agency as may
9 be necessary to effectuate the purposes of this article.

Sec. 5. *West Virginia Industrial and Publicity Commis-*
2 *sion and Economic Development Agency Abolished; Rec-*
3 *ords and Equipment Transferred; Existing Contracts;*
4 *Funds.*—(a) The West Virginia industrial and publicity
5 commission and the economic development agency are
6 hereby abolished, as of the effective date of this article,
7 and the terms of the members of the aforesaid commission

8 and of the aforesaid agency now holding office, and the
9 employment of all officers and employees of the aforesaid
10 commission and of the aforesaid agency, shall expire and
11 terminate upon that date.

12 (b) All books, papers, maps, charts, plans, literature
13 and other records, and all equipment in the possession of
14 the West Virginia industrial and publicity commission and
15 of the economic development agency upon the effective
16 date of this article, or of any member, officer or employee
17 thereof, shall be delivered or turned over to the depart-
18 ment of commerce.

19 (c) All existing contracts and obligations of the West
20 Virginia industrial and publicity commission and the eco-
21 nomic development agency shall remain in full force and
22 effect and shall be performed by the department of com-
23 merce.

24 (d) The unexpended balance existing on the effective
25 date of this article in any appropriation made to the West
26 Virginia industrial and publicity commission and the eco-
27 nomic development agency is hereby transferred and ap-
28 propriated to the department of commerce, for the fiscal
29 period ending the thirtieth day of June, one thousand nine
30 hundred sixty-one, for the purpose of carrying out the
31 powers and duties of the West Virginia industrial and pub-
32 licity commission and the economic development agency
33 transferred to the department of commerce by this article,
34 and for the payment of any bills or encumbrances in-
35 curred by the West Virginia industrial and publicity com-
36 mission and the economic development agency prior to,
37 and remaining unpaid on, the effective date of this article.

Sec. 6. *Statutory References.*—Whenever any statute
2 of the state refers to an officer or agency of the state whose
3 functions and duties are by this article transferred to
4 another officer or agency of the state, the reference shall
5 be understood to be made to the officer or agency, as the
6 case may be, to which the functions and duties have been
7 transferred.

CHAPTER 132

(Senate Bill No. 21—By Mr. Carson, Mr. President)

[Passed March 3, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal articles five and eight, chapter five; section ten, article nine, chapter six; section ten-a, article one, chapter twenty-five; chapter twenty-five-a; and articles eight and eleven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter five-a, all relating to the administration and financial affairs of the state and to the department of finance and administration, its powers and duties.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION

Article

1. Department of Finance and Administration.
2. Budget Division.
3. Purchasing Division.
4. General Services Division.

Be it enacted by the Legislature of West Virginia:

That articles five and eight, chapter five; section ten, article nine, chapter six; section ten-a, article one, chapter twenty-five; chapter twenty-five-a; and articles eight and eleven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter five-a, to read as follows:

Article 1. Department of Finance and Administration.

Section

1. Definitions.
2. Department of finance and administration; commissioner; divisions.
- 2-a. Powers and duties of commissioner.
3. Council of finance and administration.
4. Annual report by commissioner.
5. Oath and bond of commissioner; bonds for directors and employees.
6. Delegation of powers and duties by commissioner and directors.

Section 1. *Definitions.*—For the purpose of this chapter:

2 “Commissioner” means the commissioner of finance and
3 administration and, as used in article two of this chapter,
4 the director of the budget.

5 “Board” means the board of public works.

6 “Director” means the director of the division referred
7 to in the heading of the article in which the word appears.

8 “Spending unit” means a department, agency or insti-
9 tution of the state government for which an appropria-
10 tion is requested, or to which an appropriation is made by
11 the Legislature.

12 “Spending officer” means the executive head of a spend-
13 ing unit, or a person designated by him.

14 “Commodities” means supplies, material, equipment,
15 contractual services, and any other articles or things used
16 by or furnished to a department, agency or institution of
17 the state government.

18 “Contractual services” shall include telephone, tele-
19 graph, electric light and power, water and similar services.

20 “Printing” means printing, binding, ruling, lithograph-
21 ing, engraving and other similar services.

22 “Expendable commodities” means those commodities
23 which, when used in the ordinary course of business,
24 will become consumed or of no market value within the
25 period of one year or less.

26 “Removable property” means any personal property not
27 permanently affixed to or forming a part of real estate.

Sec. 2. *Department of Finance and Administration;*

2 *Commissioner; Divisions.*—The department of finance and
3 administration and the office of commissioner of finance
4 and administration are hereby created in the state gov-
5 ernment. The commissioner shall be the chief executive
6 officer of the department and director of the budget and
7 shall be appointed by the governor, by and with the ad-
8 vice and consent of the senate, for a term not exceeding
9 the term of the governor. The annual compensation of the
10 commissioner shall be ten thousand dollars. There shall
11 be in the department of finance and administration a
12 budget division, a purchasing division and a general serv-
13 ices division. Each division shall be headed by a director,

14 who shall be appointed by the commissioner to serve at
15 his will and pleasure.

Sec. 2-a. *Powers and Duties of Commissioner.*—The com-
2 missioner shall have control and supervision of the de-
3 partment of finance and administration and shall be re-
4 sponsible for the work of each of its employees. The
5 commissioner shall have the authority to employ such
6 assistants as may be necessary for the efficient operation
7 of the department. The commissioner, the division heads
8 and the employees of the department shall perform the
9 duties herein specified and shall also perform such other
10 duties as the board may prescribe.

Sec. 3. *Council of Finance and Administration.*—The
2 council of finance and administration is hereby created
3 and shall be composed of ten members, four of whom shall
4 serve ex officio and six of whom shall be appointed as
5 herein provided. The ex officio members shall be the gov-
6 ernor, attorney general, the state treasurer and the state
7 auditor. From the membership of the Legislature, the
8 president of the senate shall appoint three senators as
9 members of the council, not more than two of whom shall
10 be members of the same political party, and the speaker
11 of the house shall appoint three delegates as members of
12 the council, not more than two of whom shall be members
13 of the same political party. Members of the council ap-
14 pointed by the president of the senate and the speaker of
15 the house shall serve at the will and pleasure of the officer
16 making their appointment. The commissioner of finance
17 and administration shall serve as chairman of the council.
18 Meetings of the council shall be upon call of the chair-
19 man or a majority of the members thereof.

20 The council shall serve the department of finance and
21 administration in an advisory capacity only, and shall
22 have the following duties:

23 (1) To advise with the commissioner as to all budget
24 proposals to be submitted to the board of public works;

25 (2) At the time of the submission of the proposed
26 budget to the board of public works, to report to the board
27 its conclusions concerning the proposed budget and any
28 additions, modifications or adjustments that it may care
29 to suggest;

30 (3) To advise with the commissioner concerning such
31 studies of government and administration as it may con-
32 sider appropriate;

33 (4) To advise with the commissioner in the preparation
34 of studies designed to provide long-term capital planning
35 and finance for state institutions and agencies. Members
36 of the council shall be paid all necessary expenses incur-
37 red in the discharge of their duties.

Sec. 4. *Annual Report by Commissioner.*—The com-
2 missioner shall make an annual report to the governor
3 and to the board concerning the conduct of the department
4 and the administration of the state finances. He shall
5 also make such other reports as the governor and the board
6 may require.

Sec. 5. *Oath and Bond of Commissioner; Bonds for Di-*
2 *rectors and Employees.*—The commissioner, before en-
3 tering upon the duties of his office, shall take and subscribe
4 to the oath prescribed by section five, article four of the
5 constitution. He shall execute a bond in the penalty of
6 twenty-five thousand dollars, approved by the board, in
7 form prescribed by the attorney general, and conditioned
8 upon the faithful performance of his duties and the ac-
9 counting for all money and property coming into his hands
10 by virtue of his office. The oath and bond shall be filed
11 with the secretary of state. The division heads and all
12 other employees shall be covered by bonds in cases where
13 the commissioner thinks it necessary, which bonds shall
14 be in the penalty prescribed by the commissioner and
15 shall be filed with the secretary of state.

Sec. 6. *Delegation of Powers and Duties by Commis-*
2 *sioner.*—The powers and duties vested in the commis-
3 sioner by this chapter may be delegated by him to his
4 assistants and employees, but the commissioner shall be
5 responsible for all official acts of the department.

Article 2. Budget Division.

Section

1. Budget division; powers and duties.
2. Director of the budget; powers and duties.
3. Requests for appropriations; copies to legislative auditor.
4. Contents of requests.
5. Forms of requests.
6. Information concerning state finances.

7. Appropriations for the judiciary.
8. Examination of requests for appropriation.
9. Appropriations for other than spending units.
10. Preparation of tentative budget submitted to board.
11. Itemization of tentative budget.
12. Powers of the commissioner in the administration of expenditures.
13. Reports on revenue collections.
14. Expenditure schedules.
15. Examination and approval of expenditure schedules.
16. Reserve for emergencies.
17. Requests for quarterly allotments; approval by board.
18. Limitation on expenditures.
19. Transfers between items of an appropriation; notices to auditor and treasurer.
20. Expenditure of excess in collections; notices to auditor and treasurer.
21. Records by spending units.
22. Reduction of appropriations.
23. General fund; pro rata reductions.
24. Other funds; pro rata reductions.
25. Reduction after classification of appropriations.
26. Approval of commissioner of requests for federal aid.
27. Management accounting.
28. System of accounting to be certified to legislative auditor.
29. Expenditure of appropriations.
30. Expenditure procedure; other than for purchases of commodities.
31. Expenditure procedure for purchase of commodities.
32. Requisition for payment of personal services.
33. Legislative and judicial expenditures.
34. Additional powers and duties of commissioner.
35. Classification of employment and compensation by certain departments.
36. Certification of personnel by spending officer.
37. Personnel, classification and compensation schedules.
38. To whom personnel provisions not to apply.

Section 1. *Budget Division; Powers and Duties.*—The
2 budget division shall act as staff agency for the board of
3 public works in the exercise of its powers and duties under
4 section fifty-one, article six of the state constitution,
5 and shall exercise and perform the other powers and
6 duties conferred upon it by this article.

Sec. 2. *Director of the Budget; Powers and Duties.*—
2 The commissioner, under the immediate supervision of
3 the board, shall have the power and duty to:
4 (1) Exercise general supervision of, and make rules
5 and regulations for, the government of this division;
6 (2) Prepare, in accordance with this article, requests
7 for appropriations, estimates of cost and the contents of
8 the state budget into a tentative budget for submission to
9 the board;
10 (3) Administer the budget in accordance with this
11 article;

12 (4) Serve as staff agency to the board in the considera-
13 tion of requests for appropriations and the preparation of
14 the budget document;

15 (5) Make such investigations and submit such reports
16 as the board may require;

17 (6) Make a continuous study of state expenditures and
18 make such recommendations to the board for the more
19 economical use of state funds as he shall find practicable;

20 (7) Render assistance to spending officers with respect
21 to the fiscal affairs of spending units;

22 (8) Exercise such other powers as are vested in him by
23 this article, or which may be appropriate to the discharge
24 of his duties.

Sec. 3. *Requests for Appropriations; Copies to Legis-*
2 *lative Auditor.*—The spending officer of each spending
3 unit, other than the Legislature and the judicial branch of
4 state government, shall on or before the first day of Sep-
5 tember of each year submit to the commissioner a request
6 for appropriations for the fiscal year next ensuing. Im-
7 mediately upon receipt of such requests, the commissioner
8 shall transmit two copies thereof to the legislative auditor
9 for the use of the finance committees of the Legislature.

Sec. 4. *Contents of Requests.*—A request for an appro-
2 priation for a spending unit shall specify and itemize in
3 written form:

4 (1) A statement showing the amount and kinds of rev-
5 enue and receipts collected for use of the spending agency
6 during the next preceding fiscal year and anticipated col-
7 lections for the fiscal year next ensuing;

8 (2) A statement by purposes and objects, of the amount
9 of appropriations requested for the spending unit without
10 deducting the amount of anticipated collections of special
11 revenue, special general revenue, federal aid or other
12 receipts;

13 (3) A statement showing the actual expenditures of the
14 spending unit for the last preceding year and estimated
15 expenditures for the current fiscal year itemized by pur-
16 poses and objects, including those from regular and sup-
17plementary appropriations, federal aid, private contribu-
18 tions, transfers, allotments from an emergency or con-

19 tingent fund and any other expenditures made by or for
20 the spending unit;

21 (4) A statement showing the number, classification and
22 compensation of persons employed by the spending unit
23 distinguishing between regular, special and casual em-
24 ployees during the last preceding fiscal year and during
25 the current fiscal year. The statement shall show the
26 personnel requirements in similar form for the ensuing
27 fiscal year for which appropriations are requested;

28 (5) A statement showing in detail the purposes for
29 which increased amounts of appropriations, if any, are
30 requested; and giving a justification statement for the ex-
31 penditure of the increased amount. A construction or
32 other improvement request shall show in detail the kind
33 and scope of construction or improvement requested;

34 (6) A statement of money claims against the state aris-
35 ing out of the activities of the spending unit;

36 (7) Such other information as the commissioner may
37 request.

Sec. 5. *Forms of Requests.*—The commissioner shall
2 specify the form and the detail of itemization of requests
3 for appropriations and statements to be submitted by a
4 spending unit. He shall furnish blank forms for this
5 purpose.

Sec. 6. *Information Concerning State Finances.*—The
2 commissioner shall ascertain for the last preceding year
3 and as estimated for the current fiscal year:

4 (1) The condition of each of the funds of the state;

5 (2) A statement of all revenue collections both general
6 and special;

7 (3) Such other information relating to the finances of
8 the state as the governor may request.

Sec. 7. *Appropriations for the Judiciary.*—The governor
2 shall transmit to the commissioner the appropriations re-
3 quired by law for the judiciary for the fiscal year next
4 ensuing and which have been certified to the governor by
5 the auditor. The auditor shall certify such appropriations
6 to the governor in accordance with section fifty-one, ar-
7 ticle six of the state constitution, on or before September
8 first of each year.

Sec. 8. *Examination of Requests for Appropriations.*—

2 The commissioner shall examine the requests of a spend-
3 ing unit with respect to requested appropriations, itemiza-
4 tion, sufficiency of justification statements, and accuracy
5 and completeness of all other information which the
6 spending officer is required to submit.

7 If the commissioner finds a request, report, or state-
8 ment of a spending unit inaccurate, incomplete or in-
9 adequate, he shall consult with the spending officer of the
10 unit and require the submission of the requests in proper
11 form and content. The commissioner shall assist spending
12 officers in the preparation of their requests.

Sec. 9. *Appropriations for Other Than Spending Units.*—

2 A person or organization, other than a spending officer,
3 who desires to request a general appropriation in the state
4 budget, shall submit his request to the commissioner on
5 or before the first day of September of each year. The re-
6 quest shall be in the form prescribed by the commissioner
7 and shall be accompanied by a justification statement.

Sec. 10. *Preparation of Tentative Budget Submitted to*

2 *Board.*—The commissioner shall prepare for the consider-
3 ation of the board a tentative budget for the fiscal year
4 next ensuing. The budget shall state, at least, actual re-
5 cepts and expenditures for the fiscal year next preceding,
6 estimated receipts and expenditures for the current fiscal
7 year, and it shall state also the requested amounts, or
8 estimates, for the fiscal year next ensuing with respect to:

9 (1) Appropriations requested by each spending unit
10 and requested general appropriations;

11 (2) The amount of the total of each appropriation to
12 be paid out of collections;

13 (3) Amounts and purposes of appropriations requested
14 other than for spending units of the state;

15 (4) Revenue of each of the funds of the state;

16 (5) A summary statement of requests and revenues
17 showing the amount of an anticipated surplus or deficit.

18 On or before December first, the commissioner shall
19 submit the tentative budgets to the board. The commis-
20 sioner shall convey to the board all explanatory and justi-

21 fication statements and statements of personnel require-
22 ments of spending units as reported and filed in his office.

Sec. 11. *Itemization of Tentative Budget.*—The tenta-
2 tive budget submitted by the commissioner shall itemize
3 appropriations separately for:

4 (1) "Personal services" which shall mean salaries,
5 wages, fees and other compensation for skill, work or
6 employment;

7 (2) "Current expenses" which shall mean operating
8 costs other than personal services, and shall not include
9 equipment, repairs and alterations, buildings, or lands;

10 (3) "Equipment" which shall mean equipment items
11 which have an appreciable and calculable period of use-
12 fulness in excess of one year;

13 (4) "Repairs and alterations" which shall mean repairs
14 to structures and improvements to property which do not
15 increase the capital asset;

16 (5) "Buildings" which shall include construction and
17 alteration of structures and the improvement of lands
18 and shall include shelter, support, storage, protection, or
19 the improvement of a natural condition;

20 (6) "Lands" which shall mean the purchase of real
21 property or interests in real property.

22 A spending unit or other person requesting an appro-
23 priation may submit a different itemization with the prior
24 approval of the commissioner, if the uniform itemization
25 does not apply.

Sec. 12. *Powers of the Commissioner in the Administra-*
2 *tion of Expenditures.*—The commissioner shall supervise
3 and control the expenditure of appropriations made by
4 the Legislature except those made to the Legislature and
5 those made to the judicial branch of the state government.
6 The expenditure of an appropriation made by the Legis-
7 lature except that made for the Legislature itself and the
8 judicial branch of the state government shall be condi-
9 tioned upon compliance by the spending unit with the
10 provisions of this article. An appropriation made by the
11 Legislature except that made for the Legislature itself and

12 the judicial branch of the state government shall be
13 expended only in accordance with this article.

Sec. 13. *Reports on Revenue Collections.*—The com-
2 missioner shall ascertain the collection of the revenue of
3 the state, and shall determine each quarter of the fiscal
4 year the proportion which the amount actually collected
5 bears to the collection estimated for that period. The
6 commissioner shall certify to the board, as soon as possible
7 after the close of each quarter, and at such other times
8 as the board may request, the condition of the state
9 revenues and of the several funds of the state. For the
10 purposes of this section, the commissioner shall have the
11 authority to require all necessary estimates and reports
12 from any spending unit of the state government.

Sec. 14. *Expenditure Schedules.*—Prior to the beginning
2 of each fiscal year, the spending officer of a spending unit
3 shall submit to the commissioner a detailed expenditure
4 schedule for the ensuing fiscal year. The schedule shall
5 be submitted in such form and at such time as the com-
6 missioner may require.

7 The schedule shall show:

8 (1) A proposed monthly rate of expenditure for
9 amounts appropriated for personal services;

10 (2) A proposed quarterly rate of expenditure for
11 amounts appropriated for current expenses, equipment,
12 and repairs and alterations;

13 (3) A proposed yearly plan of expenditure for amounts
14 appropriated for buildings and lands.

15 The commissioner may accept a differently itemized
16 expenditure schedule from a spending unit to which the
17 above itemizations are not applicable.

18 The commissioner shall consult with and assist spending
19 officers in the preparation of expenditure schedules.

Sec. 15. *Examination and Approval of Expenditure*
2 *Schedules.*—The commissioner shall examine the ex-
3 penditure schedule of each spending unit, and if he finds
4 that it conforms to the appropriations made by the Legis-
5 lature, the requirements of this article, and is in accord-

6 ance with sound fiscal policy, he shall approve the
7 schedule.

8 The expenditure of the appropriations made to a spend-
9 ing unit shall be only in accordance with the approved
10 expenditure unless the schedule is amended with the
11 consent of the commissioner, or unless appropriations are
12 reduced in accordance with the provisions of sections
13 twenty-two to twenty-five, inclusive, of this article.

 Sec. 16. *Reserve for Emergencies.*—The commissioner,
2 with the approval of the board, may require that an ex-
3 penditure schedule provide for a reserve for emergencies
4 out of the total amount appropriated to the spending unit.
5 The amount of the reserve shall be determined by the
6 commissioner in consultation with the spending officer.

 Sec. 17. *Requests for Quarterly Allotments; Approval
2 by Board.*—At least thirty days prior to the beginning of
3 each quarter of the fiscal year, each spending officer shall
4 submit to the commissioner a request for an allotment of
5 public funds sufficient to operate the unit during the
6 ensuing quarter in accordance with the approved ex-
7 penditure schedule.

8 The commissioner shall examine the requests and, if he
9 finds that the amounts requested are in accordance with
10 the approved expenditure schedules and are in accord-
11 ance with sound fiscal policy, he shall submit the requests
12 to the board. The commissioner shall also submit a
13 summary statement showing the amounts expended under
14 the budget for each preceding quarter of the fiscal year
15 and the total amount requested for allotment during the
16 ensuing quarter.

17 The board shall consider the amount of requests for
18 allotment and the collection of revenues. If the board
19 finds that the collection of revenue warrants the expendi-
20 ture of the amount requested in the allotment, it shall ap-
21 prove the allotment of funds for the ensuing quarter.
22 If the board finds that the collection of revenue does not
23 warrant the allotment of the requested amount, it may
24 reduce the amount of allotments pending the collection
25 of sufficient revenue.

2 Sec. 18. *Limitation on Expenditures.*—The expenditures
3 of a spending unit during a quarter of the fiscal year shall
4 not exceed the amount of the approved allotment, unless
5 the board approves the expenditure of a larger amount.
6 Any amounts remaining unexpended at the close of the
7 quarter shall be available for reallocation and expenditure
8 during any succeeding quarter of the same fiscal year.

2 Sec. 19. *Transfers Between Items of an Appropriation;*
3 *Notices to Auditor and Treasurer.*—Upon the written re-
4 quest of a spending officer, the commissioner may, with
5 the approval of the board, transfer amounts between
6 items of the total appropriation for a spending unit in
7 order to protect or increase the efficiency of the service,
8 but a transfer shall not increase the total amount appro-
9 priated for personal services. Notices of any such transfer
10 shall be sent to the state auditor and the state treasurer.

2 Sec. 20. *Expenditure of Excess in Collections; Notices*
3 *to Auditor and Treasurer.*—If the amount actually col-
4 lected by a spending unit exceeds the amount which it is
5 authorized to expend from collections, the excess in col-
6 lections shall be set aside in a special surplus fund for
7 the spending unit. Expenditures from this fund shall be
8 made only in accordance with the following procedure:

9 The spending officer shall submit to the commissioner:
10 (1) A plan of expenditure showing the purposes for
11 which the surplus is to be expended, and

12 (2) A justification statement showing the reasons why
13 the expenditure is necessary and desirable.

14 The commissioner shall submit the request to the board
15 with his recommendation.

16 If the board approves the plan of expenditure and
17 justification statement, and is satisfied that the expendi-
18 ture is required to defray the additional cost of the service
19 or activity of the spending unit, and that the expenditure
20 is in accordance with sound fiscal policy, it may authorize
21 the use of the surplus during the current fiscal year.
22 Notices of such authorization shall be sent to the state
23 auditor and the state treasurer.

24 An expenditure from a special surplus fund without the

24 authorization of the board, or other than in accordance
25 with this section, shall be an unlawful use of public funds.

Sec. 21. *Records by Spending Units.*—A spending unit
2 shall submit to the commissioner such reports with re-
3 spect to the work and expenditures of the unit as the com-
4 missioner may request for the purposes of this article.

Sec. 22. *Reduction of Appropriations.*—The board may
2 reduce appropriations according to any of the methods
3 set forth in sections twenty-three, twenty-four and twen-
4 ty-five of this article.

Sec. 23. *General Fund; Pro Rata Reductions.*—If the
2 board determines that the amounts, or parts thereof, ap-
3 propriated from the general revenue cannot be expended
4 without creating an overdraft or a deficit in the general
5 fund, it may instruct the commissioner to reduce equally
6 and pro rata all appropriations out of general revenue in
7 such a degree as may be necessary to prevent an overdraft
8 or a deficit in the general fund.

Sec. 24. *Other Funds; Pro Rata Reductions.*—The board,
2 in the manner set forth in section twenty-three, may re-
3 duce appropriations from:

- 4 (1) Funds supported by designated taxes or fees;
- 5 (2) Fees or other collections set aside for the support
6 of designated activities or services.

7 Each fund and each fee or collection account shall be
8 treated separately, but appropriations from the same fund
9 or account shall be treated equally and reduced pro rata.

Sec. 25. *Reduction after Classification of Appropri-*
2 *ations.*—If the board determines that the reductions au-
3 thorized in sections twenty-three and twenty-four will
4 dangerously impair the existence of the essential services
5 of government, it may instruct the commissioner to reduce
6 the amount to be expended from separate appropriations
7 in accordance with the following method:

- 8 (1) The commissioner shall first classify appropriations
9 as follows:

10 Class one: For agencies collecting revenue and admin-
11 istering the fiscal operations of government, including the

12 offices and departments of the tax commissioner, auditor,
13 treasurer, and sinking fund commission;

14 Class two: For agencies vested with the supervision,
15 control, and direction of executive policy and law enforce-
16 ment, including the governor's office, the attorney gen-
17 eral's office, the department of finance and administration,
18 and the department of public safety;

19 Class three: For state institutions, educational, charita-
20 ble and corrective;

21 Class four: For other departments and services of the
22 state government;

23 Class five: For transfers from the general fund.

24 (2) The commissioner shall first reduce the appropri-
25 ations from class five and then, if necessary, for the other
26 classes in descending numerical order as follows:

27 Class four, class three, class two, class one. All reduc-
28 tions shall be in multiples of five per cent, but a fixed re-
29 lationship shall be maintained between the classes which
30 shall be measured by a difference of five per cent in the
31 rate of reduction. The maximum reduction shall not ex-
32 ceed twenty-five per cent in class five and in the other
33 classes it shall be proportional according to the following
34 table:

35	Classes	Five	Four	Three	Two	One
36	Per cent	5%				
37	of reductions	10%	5%			
38	from	15%	10%	5%		
39	total	20%	15%	10%	5%	
40	appropriations	25%	20%	15%	10%	5%

2 Sec. 26. *Approval of Commissioner of Requests for Fed-*
3 *eral Aid.*—Every agency of the state government when
4 making requests or preparing budgets to be submitted to
5 the federal government for funds, equipment, material
6 or services, the grant or allocation of which is conditioned
7 upon the use of state matching funds, shall have such re-
8 quest or budget approved in writing by the commissioner
9 before submitting it to the proper federal authority. When
10 such federal authority has approved the request or budget,
the agency of the state government shall re-submit it to

11 the commissioner for recording before any allotment or
12 encumbrance of the federal funds can be made. When-
13 ever any agency of the state government shall receive
14 from any agency of the federal government a grant or
15 allocation of funds which do not require state matching,
16 the state agency shall report to the commissioner for his
17 information the amount of the federal funds so granted
18 or allocated.

Sec. 27. *Management Accounting.*—The commissioner
2 shall formulate the requirements of a system of manage-
3 ment accounting for the planning, management, report-
4 ing, and control of state expenditures. The requirements
5 shall include methods for recording the collection of all
6 income, amounts available for expenditure, obligations,
7 encumbrances and disbursements for each spending unit,
8 and publication of a detailed statement of receipts and
9 expenditures of state moneys. The system shall include
10 the accounts to be kept by the commissioner, the auditor,
11 and the treasurer. The commissioner shall, after the sys-
12 tem has been approved by the board of public works, re-
13 quire its use by all spending units.

14 The board is hereby authorized to direct by executive
15 order, not inconsistent with the provisions of this article,
16 the transfer of such records, equipment, personnel, and
17 appropriations between the departments of finance and
18 administration, the auditor, and the treasurer as may be
19 necessary to effectuate the purposes of central accounting
20 and reporting.

Sec. 28. *System of Accounting to Be Certified to Legis-*
2 *lative Auditor.*—The commissioner shall certify the sys-
3 tem of accounting and reporting installed pursuant to the
4 provisions of this article, and any changes made therein,
5 to the legislative auditor.

Sec. 29. *Expenditure of Appropriations.*—The expendi-
2 ture of an appropriation made by the Legislature shall be
3 conditioned upon compliance by the spending unit with
4 the following provisions of this article.

Sec. 30. *Expenditure Procedure; Other Than for Pur-*
2 *chases of Commodities.*—A requisition for expenditure,

3 other than an order for the purchase of commodities, shall
4 be submitted as follows:

5 (1) The spending officer shall prepare and submit to
6 the director a requisition showing the amount, purpose,
7 and appropriation from which the expenditure is re-
8 quested;

9 (2) The director shall examine the requisition and de-
10 termine whether the amount is within the quarterly allot-
11 ment, is in accordance with the approved expenditure
12 schedule, and otherwise conforms to the provisions of this
13 article;

14 (3) If the director approves the requisition, he shall
15 encumber the proper account in the amount of the requi-
16 sition and shall transmit the requisition to the auditor for
17 disbursement in accordance with law;

18 (4) If the director disapproves the requisition, he shall
19 return it to the spending unit with a statement of his
20 reasons.

21 *Sec. 31. Expenditure Procedure for Purchase of Com-*
2 *modities.*—If a requisition is a request for a purchase of
3 commodities, the spending unit shall transmit the requisition to the budget division for the purpose of ascertaining
4 whether it conforms to the expenditure schedule. If it
5 does not so conform, the requisition shall be returned by
6 the budget division to the spending unit. If it conforms,
7 the budget division shall transmit the requisition to the
8 purchasing division for purchase in accordance with
9 article three of this chapter. When a copy of the purchase
10 order issued pursuant thereto is received from the pur-
11 chasing division by the director in accordance with the
12 provisions of section sixteen, article three of this chapter,
13 the director shall ascertain whether the unencumbered
14 balance in the appropriation concerned, in excess of all
15 unpaid obligations, is sufficient to defray the cost of such
16 order, and, if so, shall encumber the proper account and
17 so certify the fact to the purchasing division, and, if not,
18 shall notify the purchasing division which, upon receipt
19 of such notification, shall return the requisition to the
20 spending unit.

Sec. 32. *Requisition for Payment of Personal Services.*—

2 A requisition for the payment of personal services shall
3 upon receipt by the director be checked against the per-
4 sonnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal
5 services only if the amounts requested are in accordance
6 with the personnel schedule of the director.
7

Sec. 33. *Legislative and Judicial Expenditures.*—The

2 provisions of sections thirty-two, thirty-three and thirty-
3 four of this article shall not apply to the expenditure of
4 amounts appropriated for the use of the Legislature or for
5 the judiciary. In the case of appropriations made for the
6 Legislature, the clerk of the house of delegates, or the
7 clerk of the senate, as the case may be, shall present his
8 requisition directly to the auditor. In the case of appro-
9 priations made for the judiciary, the clerk of the court
10 shall present his requisition or claim directly to the audi-
11 tor. In the case of appropriations made for criminal
12 charges, the clerk or the proper officer shall present his
13 claim directly to the auditor.

Sec. 34. *Additional Powers and Duties of Commissioner.*

2 —The commissioner shall prepare and recommend a per-
3 sonnel classification which shall classify the offices and
4 employments in the state government and its agencies
5 so as to reflect the differences in training, experience,
6 ability and responsibility required for the different types
7 or kinds of service or employment, and shall recommend
8 uniform salaries and wage scales within each class. The
9 commissioner shall also prepare and recommend uniform
10 hours of work, vacation, sick leave, and notice of termina-
11 tion of employment schedules. The commissioner may
12 from time to time recommend amendments and revisions
13 to the personnel classification, compensation schedule and
14 other schedules. The commissioner shall submit the plan
15 and any amendments or revisions to the board. If the
16 board approves the plan or any revisions thereof, the
17 classification of offices and employment, the uniform
18 salary and wage scales and other schedules shall control
19 the employment and compensation of all persons em-

20 employed in the state government unless otherwise provided
21 by law.

22 The provisions of this section shall not apply to:

23 (1) Institutions under the control of the state board
24 of education, the board of governors of West Virginia Uni-
25 versity and the commissioner of public institutions;

26 (2) The department of public assistance;

27 (3) The department of employment security;

28 (4) The department of mental health;

29 (5) The state department of health;

30 (6) The conservation commissioner;

31 (7) State board of vocational education.

Sec. 35. Classification of Employment and Compensation
2 *by Certain Departments.*—The state departments or
3 agencies to which the provisions of the preceding section
4 do not apply shall, as to their respective departments, pre-
5 pare personnel classification and uniform compensation,
6 hours of work, vacation, sick leave, and notice of termina-
7 tion of employment schedules in the same manner as the
8 director prepares such classifications and uniform sched-
9 ules for other departments of the state government. Per-
10 sonnel classifications and uniform schedules shall be
11 certified by the board or officer preparing them to the
12 commissioner.

Sec. 36. Certification of Personnel by Spending Officer.
2 —The spending officer of each spending unit, within
3 thirty days prior to the beginning of each fiscal year, shall
4 certify to the commissioner a schedule of persons ap-
5 pointed to or employed by the spending unit and showing
6 the personnel classification and compensation approved
7 for each person. Amounts appropriated for personal serv-
8 ices shall be expended upon requisition only for the ap-
9 pointees and employees included upon the personnel
10 schedule and only in accordance with the rate of compen-
11 sation shown by the schedule.

Sec. 37. Personnel, Classification and Compensation
2 *Schedules.*—The commissioner shall prepare schedules of
3 the approved or certified personnel showing the personnel
4 employed in each spending unit of the state government

5 and the classification and compensation authorized to be
6 paid for each person employed. Such schedules shall be
7 preserved as a public record and shall be open to inspection
8 by any person showing good cause.

Sec. 38. *To Whom Personnel Provisions Not to Apply.*—
2 The provisions of sections thirty-six to thirty-nine, inclusive,
3 shall not apply to personal services paid in the
4 legislative branch of the state government, to salaries of
5 the judiciary and employees of the judiciary, or to salaries
6 of officers of the state government fixed by law.

Article 3. Purchasing Division.

Section

1. Departments to which article applies.
2. Books and records of director.
3. Powers and duties of director.
4. Rules and regulations of director.
5. Standard specifications; promulgation and adoption by director; to apply to all purchases.
6. Commissioner may appoint advisers on standard specifications to act as herein provided.
7. Preference given state products.
8. Director to advise with heads of state institutions.
9. Facilities of department available to local governmental bodies.
10. Examination and testing of purchases.
11. Competitive bids.
12. Publication of solicitation for sealed bids.
13. Purchase in open market on competitive bids.
14. Bids based on standard specifications; awards to lowest responsible bidder; uniform bids; record of bids.
15. Contracts signed by commissioner; form approved; filing.
16. Copies of purchase orders sent to other divisions; when orders for delivery on contracts or on open market not awarded.
17. Emergency purchase in open market.
18. Special fund; purposes; how composed.
19. Void purchase or contract of a department; personal liability.
20. Purchase or substitution of particular trade name or brand.
21. Purchase from federal government.
22. Department heads to submit list of expendable commodities.
23. Disposition by director of commodities; application of proceeds from sale.
24. Contracts for public printing and paper for departments.
25. Director to supply printing; printing plants at institutions.
26. Legislative printing.
27. Publication of reports of supreme court of appeals.
28. Number of copies of departmental reports.
29. Payment from current expense appropriations.
30. Printing paper and stationery issued as needed.
31. Custodian of reports and acts; delivery to state law librarian; sale.
32. Furnishing paper stock to contractor for state printing.
33. Director to establish a central duplicating department; exclusion by director of certain departments from provisions.
34. Conditions affecting application of article.

35. Financial interest of commissioner, etc.; receiving reward from person awarded contract.
36. Penalty for violation of article.
37. Obtaining money and property under false pretenses; defrauding state; penalties.
38. Conspiracy to affect market and prices; penalties.
39. Power of commissioner to suspend right to bid.
40. Review by board.
41. Authority over inventories and property control.
42. Department heads to submit inventory of all property.
43. Powers and duties of director.
44. Creation of surplus property agency as subdivision; its authority.
45. Surplus property agency; authority of director.

Section 1. *Departments to Which Article Applies.*—The provisions of this article for the purchase of commodities and printing shall apply to all of the departments of the state government, except as is otherwise provided by this article or by law: *Provided, however,* That the provisions of this article shall in no wise apply to purchase of commodities of the legislative department unless the Legislature or either house thereof requests the director to render specific services under the provisions of this chapter.

Sec. 2. *Books and Records of Director.*—The director shall keep in his offices accurate books, accounts and records of all transactions of his department, and such books, accounts and records shall be public records, and shall at all proper times be available for inspection by any taxpayer of the state.

Sec. 3. *Powers and Duties of Director.*—The director, under the direction and supervision of the commissioner, shall be the executive officer of the purchasing division and shall have the power and duty to:

- (1) Purchase or contract for, in the name of the state, the commodities and printing required by the departments of the state government;
- (2) Apply and enforce standard specifications established in accordance with section five of this article, as hereinafter provided;
- (3) Negotiate for all grounds, buildings, office or other space required by state departments;
- (4) Transfer to or between departments or sell commodities that are surplus, obsolete, or unused, as herein after provided;

16 (5) Have charge of central storerooms for the supply
17 of departments;

18 (6) Establish and maintain a laboratory for the testing
19 of commodities and make use of existing facilities in state
20 institutions for that purpose, as hereinafter provided;

21 (7) Direct the state agency for surplus property as pro-
22 vided in sections forty-four and forty-five of this ar-
23 ticle;

24 (8) Recommend to the commissioner that the right and
25 privilege of a person to bid on state purchases be sus-
26 pended when the director has evidence that such person
27 has violated any of the provisions of the purchasing law
28 or the rules and regulations of the director.

Sec. 4. *Rules and Regulations of Director.*—The director
2 shall adopt and amend rules and regulations to:

3 (1) Authorize a department to purchase directly, speci-
4 fied commodities, and prescribe the manner in which such
5 purchases shall be made;

6 (2) Authorize, in writing, a department to purchase
7 commodities in the open market for immediate delivery
8 in emergencies, define such emergencies, and prescribe
9 the manner in which such purchases shall be made and
10 reported to the director; and for the purposes mentioned
11 in paragraphs (1) and (2) of this section, the head of any
12 department, or the financial governing board of any in-
13 stitution, may, with the approval of the director, make
14 requisitions upon the auditor for a sum to be known as
15 an advance allowance account, in no case to exceed five
16 per cent of the total of the appropriations for any such
17 department, and the auditor shall draw his warrant upon
18 the treasurer for such accounts. All such advance allow-
19 ance accounts shall be accounted for by the head of the
20 department or institution once every thirty days or oft-
21 ener if required by the state auditor or director;

22 (3) Prescribe the manner in which commodities shall
23 be purchased, delivered, stored and distributed;

24 (4) Prescribe the time for making requisitions and esti-
25 mates of commodities, the future period which they are
26 to cover, the form in which they shall be submitted, and
27 the manner of their authentication;

28 (5) Prescribe the manner of inspecting all deliveries
29 of commodities, and making chemical and physical tests
30 of samples submitted with bids and samples of deliveries
31 to determine compliance with specifications;

32 (6) Prescribe the amount of deposit or bond to be sub-
33 mitted with a bid or contract and the amount of deposit
34 or bond to be given for the faithful performance of a
35 contract;

36 (7) Provide for such other matters as may be necessary
37 to give effect to the foregoing rules and regulations and
38 the provisions of this article.

Sec. 5. *Standard Specifications; Promulgation and*
2 *Adoption by Director; to Apply to All Purchases.*—The
3 director shall classify all commodities and shall promul-
4 gate and adopt a schedule of standard specifications based
5 on scientific and technical data, which schedule shall es-
6 tablish the quality within each particular classification or
7 subclassification to which all commodities to be purchased
8 and services to be contracted for by the state must con-
9 form. After adoption the standard specification shall apply
10 to every future purchase of or contract for the commodi-
11 ties described in the specifications. The purchases of no
12 department may be exempt from compliance with the
13 standard specifications so established, but the director,
14 whenever he deems it necessary and advisable, may ex-
15 empt therefrom the purchase of particular items.

16 It shall be the duty of the director to keep such standard
17 specifications up to date and in conformity with all tech-
18 nical and scientific advancements pertaining to commodi-
19 ties and services covered in such schedule and to that end
20 he may, from time to time, revise and amend the standard
21 specifications therein included.

Sec. 6. *Commissioner May Appoint Advisers on Stand-*
2 *ard Specifications to Act as Herein Provided.*—The com-
3 missioner may from time to time request any official or
4 employee of any department to aid and advise the director
5 in formulating, revising or amending the schedule of
6 standard specifications provided for in section five of this
7 article. Such official or employee shall act at the request

8 of the commissioner and shall be entitled to receive his
9 necessary expenses incurred in compliance therewith, but
10 shall receive no additional compensation therefor.

Sec. 7. *Preference Given State Products.*—The director
2 shall, in the purchases of commodities and printing, give
3 preference, so far as may be practicable and not conflict-
4 ing with the provisions of this article, to commodities and
5 printing produced in this state.

Sec. 8. *Director to Advise with Heads of State Institu-*
2 *tions.*—The director shall advise with the heads of the
3 various state institutions producing commodities, with
4 the view to making these articles suitable for the needs
5 of state departments.

Sec. 9. *Facilities of Department Available to Local Gov-*
2 *ernmental Bodies.*—The director shall make available the
3 facilities and services of his department to county, school,
4 municipal and other local governmental bodies within this
5 state. The actual expenses incurred thereby shall be paid
6 by the local governmental body.

Sec. 10. *Examination and Testing of Purchases.*—Within
2 the limits of funds available for the purpose, the director,
3 or some person appointed by him for that purpose, shall
4 examine and test upon delivery commodities purchased
5 by the state to determine whether such commodities con-
6 form to the standard specifications promulgated pursuant
7 to section five of this article, and whether the commodities
8 delivered conform with the purchase contracts therefor.

Sec. 11. *Competitive Bids.*—A purchase of and contract
2 for commodities and printing shall be based, whenever
3 possible, on competitive bids.

Sec. 12. *Publication of Solicitation for Sealed Bids.*—
2 The director shall solicit sealed bids for the purchase of
3 commodities and printing that is estimated to exceed two
4 thousand dollars. No spending unit shall issue a series of
5 requisitions which would circumvent this two thousand
6 dollar maximum. Bids shall be obtained by public notice
7 inserted at least twice in a newspaper having a general
8 circulation in the county where the department or agency

9 making the requisition is located and in a daily news-
10 paper of general circulation at least two weeks before
11 the final date of submitting bids and by any other adver-
12 tising medium the director may deem advisable. The di-
13 rector may also solicit sealed bids by sending requests
14 by mail to prospective suppliers and by posting notice on
15 a bulletin board in his office.

Sec. 13. *Purchase in Open Market on Competitive Bids.*

2 —The director may make a purchase of commodities and
3 printing of less than two thousand dollars in amount in
4 the open market, but such purchase shall, wherever pos-
5 sible, be based on at least three competitive bids.

Sec. 14. *Bids Based on Standard Specifications; Awards*
2 *to Lowest Responsible Bidder; Uniform Bids; Record of*
3 *Bids.*—Bids shall be based on the standard specifications
4 promulgated and adopted in accordance with the pro-
5 visions of section five of this article. All open market
6 orders, purchases based on advertised bid requests, or
7 contracts made by the director or by a state department
8 shall be awarded to the lowest responsible bidder, taking
9 into consideration the qualities of the articles to be sup-
10 plied, their conformity with specifications, their suitability
11 to the requirements of the state government, and the de-
12 livery terms. Any or all bids may be rejected. If all bids
13 received on a pending contract are for the same unit price
14 or total amount, the director shall have authority to
15 reject all bids, and to purchase the required commodities
16 and printing in the open market, if the price paid in the
17 open market does not exceed the bid prices.

18 Each bid, with the name of the bidder, shall be entered
19 on a record and each record, with the successful bid indi-
20 cated thereon, shall, after the award of the order or con-
21 tract, be open to public inspection.

Sec. 15. *Contracts Signed by Commissioner; Form Ap-*
2 *proved; Filing.*—Contracts shall be signed by the com-
3 missioner in the name of the state. They shall be approved
4 as to form by the attorney general. A contract that re-
5 quires more than six months for its fulfilment shall be
6 filed with the state auditor.

Sec. 16. *Copies of Purchase Orders Sent to Other Divisions; When Orders for Delivery on Contracts or on Open Market Not Awarded.*—A copy of all purchase orders shall be transmitted to the director of the budget division so that the proper account may be encumbered before they are sent to the vendors. Except in an emergency, an order for delivery on a contract or open market for commodities for a spending unit shall not be awarded until it has been certified to the director by the commissioner as director of the budget that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. An order for equipment shall not be awarded until it has also been certified to the director by the supervisor of inventory control that there is no such equipment in stock and not in use.

Sec. 17. *Emergency Purchase in Open Market.*—The director may authorize, in writing, a state department to purchase in the open market, without filing requisition or estimate, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work. A report of any such purchase, together with a record of the competitive bids upon which it was based, shall be submitted at once to the director by the head of the state department concerned, together with a full account of the circumstances of the emergency. Such report shall be entered on a record and shall be open to public inspection.

Sec. 18. *Special Fund; Purposes; How Composed.*—There is hereby created a special revenue fund to be administered by the director to finance and facilitate the following functions of the director:

- (1) Purchase in volume and for maintenance of stocks and commodities to supply the needs of state departments;
- (2) Performance for state departments of all mimeographing, photostating, microfilming, multilithing, multi-graphing, and other work as provided by section thirty-three of this article.

11 The amount of the fund may be fixed and changed by
12 the board upon the recommendation of the commissioner.
13 If at the end of each fiscal year the cash balance plus value
14 of commodity inventories on hand exceeds the amount so
15 fixed, the excess in cash shall be transferred by the board
16 upon recommendation of the commissioner to the general
17 revenue fund and become a part of the general revenue
18 of the state. The fund shall be composed of the following:

19 (1) The cash balance and inventories of the fund here-
20 tofore established by this section;

21 (2) Charges made by the director for commodities sold
22 and services rendered to the state departments as herein
23 described: *Provided*, That charges shall not exceed total
24 cost to the fund, which total cost shall include storage,
25 supplies, equipment and salaries and wages of employees
26 necessary to supply commodities and services in addition
27 to purchase price of commodities.

Sec. 19. *Void Purchase or Contract of a Department;
2 Personal Liability.*—If a department purchases or con-
3 tracts for commodities contrary to the provisions of this
4 article or the rules and regulations made thereunder, such
5 purchase or contract shall be void and of no effect. The
6 head of such department shall be personally liable for the
7 costs of such purchase or contract, and, if already paid out
8 of state funds, the amount thereof may be recovered in
9 the name of the state in an appropriate action instituted
10 therefor.

Sec. 20. *Purchase or Substitution of Particular Trade
2 Name or Brand.*—If a department requests the purchase
3 of a commodity bearing a particular trade name or brand,
4 and if the commodity is covered by standard specifications
5 adopted as provided by section five of this article, the di-
6 rector may substitute a commodity bearing a different
7 trade name or brand, if the substituted commodity rea-
8 sonably conforms to the adopted standard specifications
9 and can be obtained at a lower price.

Sec. 21. *Purchase from Federal Government.*—Notwith-
2 standing any other provision of this article, the director
3 may, upon the recommendation of a state department,

- 4 purchase from the government of the United States, com-
5 modities or equipment, by tendering bids therefor.

Sec. 22. *Department Heads to Submit List of Expend-
2 able Commodities.*—The head of every department shall
3 submit a list of expendable commodities such department
4 has on hand whenever requested to do so by the director.

Sec. 23. *Disposition by Director of Commodities; Appli-
2 cation of Proceeds from Sale.*—The director shall have the
3 exclusive power and authority to make disposition of com-
4 modities or expendable commodities now owned or in the
5 future acquired by the state, when any such commodities
6 are or shall have become obsolete, unusable or are not
7 being used, or need to be replaced, and are so reported in
8 writing by the department owning or having custody or
9 control thereof as available for the director's disposition.

10 It shall be the duty of the director to determine what
11 commodities or expendable commodities should be dis-
12 posed of and he shall make such disposition in the manner
13 which in his opinion will be most advantageous to the
14 state, either by transferring the particular commodities
15 or expendable commodities between departments, by
16 trading in such commodities as a part payment on the
17 purchase of new commodities, or by sale thereof to the
18 highest bidder by means of public auctions or sealed bids
19 after having first advertised the time, terms and place of
20 such sale once a week for two successive weeks in some
21 newspaper published or having general circulation in the
22 county wherein the sale is to be conducted and any other
23 advertising medium the director may deem advisable.
24 The director shall have the authority to sell to the highest
25 bidder or to any one or more of the highest bidders, if
26 there be more than one, or, if in his opinion the best inter-
27 est of the state will be served, to reject all bids. Upon the
28 transfer of commodities or expendable commodities be-
29 tween departments, the director shall set the price to be
30 paid by the receiving department with due consideration
31 given to current market prices. The proceeds of such sales
32 or transfers shall be deposited in the state treasury to the
33 credit on a pro rata basis of the fund or funds out of

34 which the purchase of the particular commodities or ex-
35 pendable commodities was made.

Sec. 24. *Contracts for Public Printing and Paper for*
2 *Departments.*—The director shall contract for public
3 printing and for printing paper for the use of departments
4 in the manner provided for contracts under sections
5 eleven through twenty-one of this article, and in accord-
6 ance with the specifications adopted as provided by sec-
7 tion five of this article.

Sec. 25. *Director to Supply Printing; Printing Plants*
2 *at Institutions.*—The director shall supply the depart-
3 ments with printing in the same manner as provided for
4 commodities under sections eleven through twenty-one
5 of this article. But the provisions of this section shall not
6 be construed to prohibit the state from maintaining at
7 educational, benevolent, penal or correctional institutions
8 printing plants for the purpose of instruction or for print-
9 ing for a state department.

Sec. 26. *Legislative Printing.*—Notwithstanding any
2 other provision of this article, the letting of all contracts
3 for legislative printing shall be subject only to the pro-
4 visions of this section.

5 Upon request of the Legislature, or either house thereof,
6 all contracts for legislative printing shall be let on com-
7 petitive bids by the director to the lowest responsible
8 bidder. Each such contract shall be subject to the ap-
9 proval of the governor, and in case of his disapproval the
10 contract shall be re-let on competitive bids submitted in
11 the same manner as the original bids on the contract that
12 was disapproved. Each bid on every such contract shall
13 be within the maximum limits that may be fixed from
14 time to time by concurrent resolution of the Legislature.
15 The clerk of the senate and the clerk of the house of dele-
16 gates shall have exclusive control of all printing author-
17 ized by their respective legislative bodies, and shall ap-
18 prove the specifications included in any contract before
19 an invitation for bids is released by the director of pur-
20 chases. Before presenting for payment any bill for such
21 legislative printing, the printer shall have the same ap-

22 proved by the purchasing division as correct and according
23 to contract specifications. A copy of all bills for legislative
24 printing shall be furnished the clerk of the house for which
25 such printing was done. When properly approved bills are
26 presented to the clerk of the senate, or to the clerk of the
27 house of delegates, he shall draw his requisition upon the
28 auditor in the amount of the bill, payable from the legis-
29 lative printing fund, and the auditor shall honor the
30 requisition and issue to the printer a state draft therefor.

Sec. 27. *Publication of Reports of Supreme Court of Appeals.*—Notwithstanding any of the provisions of this
2 article, the official reporter of the supreme court of ap-
3 peals shall have charge and supervision of the printing
4 and binding of the reports of the decisions of the supreme
5 court of appeals of the state, and shall contract for their
6 publication in the same manner that the director of the
7 purchasing division contracts under sections eleven
8 through twenty-one of this article. Such contract shall
9 provide for the publication of fifteen hundred copies, or
10 such additional number as the reporter and supreme court
11 of appeals may jointly direct, on such paper and to be
12 bound in accordance with directions and specifications as
13 may be specified by the reporter by and with the con-
14 currence of the court. The size of type and page shall be
15 prescribed by the reporter with the concurrence of the
16 court. A volume shall be published according to the terms
17 of the contract whenever ordered by the court. The re-
18 porter shall secure the copyright of each volume for the
19 benefit of the state. The reports shall be styled "West
20 Virginia Reports".
21

22 The printing and binding of the reports shall be done
23 under the direction of and in the manner prescribed by
24 the reporter, subject to the control of the court. The re-
25 porter shall prefix to the printed report of each case the
26 dates when the same was submitted and decided. Each
27 volume shall, if practicable, contain the reports of at
28 least eighty cases decided by the court, and shall contain
29 approximately one thousand pages unless otherwise
30 ordered by the court, exclusive of the index and table of
31 cases reported and cited. Proof sheets shall be furnished

32 by the printer to the reporter and to each judge of the
33 court, and such corrections and modifications shall be
34 made by the printer as the reporter or any of the judges
35 shall direct. If the work is not done in the manner re-
36 quired by law, the reporter shall not approve the volume
37 and shall not accept it.

38 The reports of the decisions of the supreme court of ap-
39 peals may be published in pamphlet form in advance of
40 the publication of the bound volumes of the "West Vir-
41 ginia Reports", periodically, or at such times as may be
42 directed by the reporter and the supreme court of appeals.
43 The reporter shall secure the copyright of each pamphlet
44 of opinions so published in advance. Each pamphlet shall
45 contain the report of such number of cases as the supreme
46 court of appeals and the reporter shall deem advisable.

47 The contract for the publication of such advance sheets
48 shall be made in the manner provided for the publication
49 of bound volumes of the "West Virginia Reports".

50 A charge of not less than the actual cost of printing and
51 distribution shall be made for such advance sheets.

Sec. 28. *Number of Copies of Departmental Reports.*—

2 Subject to the approval of the commissioner and the gov-
3 ernor, the director shall have the authority to limit the
4 number of copies of annual or biennial reports, bulletins
5 and other publications ordered to be printed by each de-
6 partment.

Sec. 29. *Payment from Current Expense Appropriations.*—Printing, binding and stationery for all depart-
2 ments shall be paid for from the current expense appro-
3 priations for such departments.
4

Sec. 30. *Printing Paper and Stationery Issued as Needed.*—All printing paper and stationery shall be de-
2 livered to the director, who shall have charge of the same
3 and issue it as needed.
4

Sec. 31. *Custodian of Reports and Acts; Delivery to State Law Librarian; Sale.*—The director shall be cus-
2 todian of the West Virginia Reports after they are printed
3 and bound and approved by the reporter, and of the acts
4

5 of the Legislature after they are printed and bound and
6 approved by the clerk of the house of delegates. As soon
7 as practicable after any new volume of such reports or
8 acts has been delivered to the director, not including re-
9 prints of former volumes, he shall deliver to the state law
10 librarian sufficient copies to enable him to make distribu-
11 tion thereof in the manner prescribed by sections five and
12 six, article eight, chapter fifty-one of this code.

13 The director shall sell such copies of the reports and
14 acts as remain after the distribution provided by law has
15 been made at a price to be fixed by him with the approval
16 of the commissioner, but in no case shall such price be less
17 than the actual cost to the state of the publication thereof.
18 The proceeds of such sales shall immediately be paid into
19 the treasury.

Sec. 32. *Furnishing Paper Stock to Contractor for State*
2 *Printing.*—Paper stock, if furnished by the state to the
3 contractor, shall be billed at the current market price for
4 the grade furnished in the quantity furnished. It shall be
5 unlawful and discriminatory for the director to furnish
6 the contractor with paper for any state work, unless all
7 bidders are notified in advance of placing their bids at the
8 prices at which the state will supply such stock. It shall
9 also be unlawful for the director to furnish the contractor
10 any paper for other than the state work under contract.

Sec. 33. *Director to Establish a Central Duplicating De-*
2 *partment; Exclusion by Director of Certain Departments*
3 *from Provisions.*—All mimeographing, photostating, mi-
4 crofilming, multilithing, multigraphing, and other dupli-
5 cating work required to be done by or for any department
6 shall be done by a central duplicating department, which
7 department shall be established by and under the super-
8 vision of the director.

9 All mimeographing, photostating, microfilming, multi-
10 lithing, multigraphing, and other duplicating equipment
11 and supplies shall be transferred to the central duplicating
12 department.

13 If the director be of the opinion that any department is
14 capable of doing such duplicating work as may be re-

15 quired by such particular department more efficiently and
16 economically than can the central duplicating department,
17 he may, in his discretion, exempt such particular depart-
18 ment from the provisions of this section; or if the director
19 believes economy or efficiency can be effected by letting
20 such work or any part thereof to contract, then he may do
21 so in the manner provided for contracts under sections
22 eleven through twenty-one of this article.

Sec. 34. *Conditions Affecting Application of Article.*—

2 The application of this article shall be subject to the fol-
3 lowing conditions:

4 (1) The purchases of stock for state liquor stores shall
5 be made by the West Virginia liquor control commission;

6 (2) Whenever the authority to acquire property other
7 than commodities and printing, by lease, agreement, con-
8 demnation or otherwise, is now specifically vested by law
9 in a department, that authority shall not be affected by
10 the provisions of this article. Whenever this authority is
11 not now specifically vested in a department, such author-
12 ity shall be exercised by the director of the purchasing
13 division;

14 (3) In the purchase and contracting for textbooks by
15 the state board of education, the director shall perform
16 only such duties as may be required by law.

Sec. 35. *Financial Interest of Commissioner, etc.; Re-*
2 *ceiving Reward from Person Awarded Contract.*—Neither
3 the commissioner, nor any employee of the department of
4 finance and administration, shall be financially interested,
5 or have any beneficial personal interest, directly or indi-
6 rectly, in the purchase of any commodities and printing,
7 nor in any firm, partnership, corporation or association
8 furnishing them. No such person shall accept or receive
9 directly or indirectly from any person, firm or corporation
10 to whom a contract may be awarded, by rebate, gift or
11 otherwise, any money or other thing of value whatsoever,
12 or any promise, obligation or contract for future reward,
13 or compensation.

14 A person who violates this section shall be guilty of a
15 misdemeanor, and, upon conviction, shall be confined in

16 jail not less than three months nor more than one year,
17 or fined not less than fifty nor more than one thousand
18 dollars, or both, in the discretion of the court.

Sec. 36. *Penalty for Violation of Article.*—A person who
2 violates a provision of this article other than the provi-
3 sions of section thirty-five shall be guilty of a misde-
4 meanor, and, upon conviction, shall be confined in jail not
5 less than ten days nor more than one year, or fined not
6 less than ten nor more than five hundred dollars, or both,
7 in the discretion of the court.

Sec. 37. *Obtaining Money and Property under False
2 Pretenses; Defrauding State; Penalties.*—It shall be un-
3 lawful for any person to obtain from the state under any
4 contract made under the provisions of this article, by false
5 pretense, token or representation, or by delivery of in-
6 ferior commodities, with intent to defraud, money, goods
7 or other property, and upon violation thereof, such person
8 shall be guilty of a felony, and, upon conviction therefor,
9 shall be confined in the penitentiary not less than one year
10 nor more than five years, and be fined not exceeding one
11 thousand dollars.

Sec. 38. *Conspiracy to Affect Market and Prices; Penal-
2 ties.*—It shall be unlawful for any person to jointly com-
3 bine or collude or conspire in any way to affect the market,
4 or price, or supply of commodities and printing obtained
5 or to be obtained by the state under the provisions of this
6 article, and upon violation thereof such person shall be
7 guilty of a felony, and, upon conviction therefor, shall be
8 confined in the penitentiary not less than one year nor
9 more than five years, and be fined not exceeding one
10 thousand dollars.

Sec. 39. *Power of Commissioner to Suspend Right to
2 Bid.*—The commissioner shall have the power and author-
3 ity, upon the recommendation of the director, to suspend,
4 for a period not to exceed one year, the right and privilege
5 of a person to bid on state purchases when the commis-
6 sioner has reason to believe that such person has violated
7 any of the provisions of the purchasing law or the rules
8 and regulations of the director. Every person whose right

9 to bid has been so suspended shall be notified thereof by
10 a letter posted by registered mail containing the reason
11 for such suspension.

Sec. 40. *Review by Board.*—Any person whose right
2 to bid on state purchases has been suspended by the com-
3 missioner under the authority of the preceding section
4 shall have the right to have the commissioner's action re-
5 viewed by a board composed of the governor, attorney
6 general and auditor of the state, which board shall have
7 the power and authority to set aside such suspension.

Sec. 41. *Authority over Inventories and Property Con-*
2 *trol.*—The director shall, under the direction and super-
3 vision of the commissioner, have full authority over in-
4 ventories and property control.

Sec. 42. *Department Heads to Submit Inventory of All*
2 *Property.*—The head of every department of the state
3 government shall, on or before July fifteenth of each year,
4 file with the director an inventory of all real and personal
5 property, and of all equipment, supplies and commodities
6 in its possession as of the close of the last fiscal year.

Sec. 43. *Powers and Duties of Director.*—The director
2 shall have the power and duty to:

3 (1) Make and keep current an inventory of all remov-
4 able property belonging to the state. Such inventory shall
5 be kept on file in the office of the director as a public rec-
6 ord. The inventory shall disclose the name and address
7 of the vendor, the date of the purchase, the price paid for
8 the property therein described and the disposition thereof;

9 (2) Provide for the maintenance and repair of all of-
10 fice furniture, machinery and equipment belonging to the
11 state, either by employing personnel and facilities under
12 his direction or by contracting with state agencies or
13 private parties.

Sec. 44. *Creation of Surplus Property Agency as Sub-*
2 *division; Its Authority.*—There is hereby established as a
3 subdivision of the purchasing division an agency to be
4 known as the "State Agency for Surplus Property". This
5 agency shall have exclusive authority to receive from the

6 department of defense and any other federal department
7 or agency such equipment, materials, books and other
8 supplies as may be declared excess and surplus property.
9 The agency shall also have exclusive authority to ware-
10 house and distribute all such excess and surplus property
11 so received to all recipients within the state as may now
12 be or hereafter become eligible therefor under federal
13 laws or regulations.

Sec. 45. *Surplus Property Agency; Authority of Direc-*
2 *tor.*—The purchasing division is hereby designated as a
3 sole agency for the purposes of sections forty-four and
4 forty-five of this article, and the director shall be the di-
5 rector of the state agency for surplus property. As such,
6 he shall have sole authority to:

7 (a) Make such reasonable rules and regulations, re-
8 quire such certifications and agreements by eligible re-
9 cipients of surplus property, and employ such persons as
10 may be necessary for the accomplishment of the purposes
11 of sections forty-four and forty-five of this article;

12 (b) Make such certification and enter into such agree-
13 ments or understandings for and in the name of the state
14 (including cooperative agreements with federal agencies)
15 as may be appropriate or required by federal law or regu-
16 lations in carrying out the functions hereby authorized;

17 (c) Require such reports and make such investigations
18 and take such action as may be necessary for the accom-
19 plishment of the purposes of this and the preceding
20 section.

Article 4. General Services Division.

Section

1. Care, control and custody of capitol buildings and grounds.
2. Control over central mailing office in capitol building.
3. Commissioner to appoint mail clerk and other necessary employees and fix salaries.
4. Duties of mail clerk.
5. Use of mail office by departments.
6. Right of appeal.

Section 1. *Care, Control and Custody of Capitol Build-*
2 *ings and Grounds.*—The director shall be charged with
3 the full responsibility for the care, control and custody of

4 the capitol buildings and grounds, and in this connection
5 he shall:

6 (1) Furnish guards and janitors for the capitol build-
7 ings and grounds, together with all the apartments there-
8 in, or connected therewith, regardless of the budget or
9 budgets, departmental or otherwise, from which such
10 guards and janitors are paid, and shall furnish janitorial
11 supplies, light, heat and ventilation for all the rooms and
12 corridors of the building. Under the direction of the pres-
13 ident of the senate and speaker of the house of delegates,
14 the director shall have charge of the halls and committee
15 rooms of the two houses and any other quarters at the
16 state capitol provided for the use of the Legislature or its
17 staff, and keep the same properly cleaned, warmed and
18 in good order, and shall do and perform such other duties
19 in relation thereto as either house may require;

20 (2) Furnish part-time messenger service to the various
21 state departments. Department heads shall be consulted
22 with reference to the amount of messenger service re-
23 quired for their departments. Janitor-messengers, or
24 part-time messengers, shall receive from the director
25 compensation for total services in the same manner as
26 other employees are paid. Any state department shall,
27 however, have authority to furnish its own messenger
28 service without using employees of the director;

29 (3) Have immediate control and direction of the switch-
30 board telephone service for the various departments of
31 the state capitol. Changes in telephone instruments or
32 equipment in the various departments of the state capitol
33 shall be referred to the director, and payment for any such
34 changes will not be honored unless such changes have
35 been approved by the director. A simple accounting sys-
36 tem shall be installed and maintained by the director for
37 all telephone service to the state departments;

38 (4) Landscape and take care of the lawns and gardens;

39 (5) Direct the making of all minor repairs to and al-
40 terations of the capitol buildings and grounds. Major re-
41 pairs and alterations shall be made under the supervision
42 of the director, subject to the direction of the board.

43 The offices of the assistants and employees appointed

44 to perform these duties shall be located where designated
45 by the board, except that they shall not be located in any
46 of the legislative chambers, offices, rooms or halls. Office
47 hours shall be so arranged that emergency or telephone
48 service shall be available at all times. The hours of em-
49 ployment shall be so arranged that janitorial service shall
50 not interfere with other employment during regular office
51 hours.

Sec. 2. *Control over Central Mailing Office in Capitol Building.*—The central mailing office heretofore created
2 in the capitol, hereinafter called the "mailing office", is
3 hereby placed under the control of the director.

Sec. 3. *Commissioner to Appoint Mail Clerk and Other Necessary Employees and Fix Salaries.*—The commis-
2 sioner shall appoint a mail clerk and appoint such other
3 employees as shall be necessary to carry out the provisions
4 of the following two sections. Such mail clerk and em-
5 ployees shall hold office during the will and pleasure of
6 the commissioner. The mail clerk shall be a capable man,
7 experienced in the handling of United States mail.

Sec. 4. *Duties of Mail Clerk.*—The mail clerk shall have
2 general charge and supervision of the mail office, and shall
3 be responsible for its efficient administration. He shall
4 be required to:

5 (1) Keep proper books of account of the receipts and
6 disbursements of the mail office;

7 (2) Render to the director a report each month, show-
8 ing the expenses of the mail office for the preceding
9 month, and shall render such other reports as the director
10 may require;

11 (3) Keep the mail office open to receive early mail and
12 to serve state departments;

13 (4) Provide rules and regulations for the efficient and
14 prompt dispatch of the mail.

Sec. 5. *Use of Mail Office by Departments.*—All state
2 departments, boards, bureaus and commissions having
3 their offices in the capitol, except the legislative depart-
4 ment, shall dispatch all mail through the mail office:

5 *Provided, however,* That mail prepared after gathering
6 time and mail for special handling, within the limits of
7 postage available to the department, may be posted
8 through federal postoffice channels.

Sec. 6. *Right of Appeal.*—Upon occasion of a showing
2 that the application of the authority vested under the
3 provisions of this chapter may interfere with the success-
4 ful functioning of any department, institution or agency
5 of the government, such department, institution or agency
6 may have the right of appeal to the board for review of the
7 case and the decision or conclusion of the board shall
8 govern in such cases.

CHAPTER 133

(Senate Bill No. 23—By Mr. McCourt and Mr. Carrigan)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to repeal article eleven, chapter sixteen; section thirteen-b, article nineteen, chapter seventeen; chapter twenty; chapter twenty-a; and sections four, five, six, seven, eight and nine, article two-a, chapter twenty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal chapter fifty-four, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three; and to enact in lieu thereof a new chapter twenty of said code, relating to the establishment and administration of a comprehensive natural resources department in the state government and providing for its personnel, jurisdiction, powers, functions, services and enforcement processes.

CHAPTER 20. NATURAL RESOURCES.

Article

1. Organization and Administration.
2. Game and Fish.
3. Forests and Wildlife Areas.
4. Parks and Recreation.

5. **Water Resources.**
6. **Reclamation.**
7. **Law Enforcement, Procedures and Penalties.**
8. **General and Miscellaneous Provisions.**

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter sixteen; section thirteen-b, article nineteen, chapter seventeen; chapter twenty; chapter twenty-a; and sections four, five, six, seven, eight and nine, article two-a, chapter twenty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and chapter fifty-four, acts of the Legislature of West Virginia, first extraordinary session, one thousand nine hundred thirty-three, be repealed; and that a new chapter twenty of said code be enacted to read as follows:

Article 1. Organization and Administration.

Section

1. Purposes and objects; how chapter cited.
2. Definitions.
3. Department, office of director and commission established.
4. Director chief executive officer; appointment, term and qualification; vacancy; removal.
5. Salary, expenses, oath and bond of director.
6. Offices and office hours.
7. Additional powers, duties and services of director.
8. Personnel management.
9. Fiscal management.
10. Property management.
11. Public relations.
12. Surveys and planning.
13. Law enforcement and legal services.
14. Divisions within department.
15. Public land corporation.
16. Natural resources commission.
17. Commission organization and services.
18. Government cooperation; projects; finances; properties.

Section 1. Purposes and Objects; How Chapter Cited.—

- 2 This chapter is enacted to provide a comprehensive pro-
- 3 gram for the exploration, conservation, development, pro-
- 4 tection, enjoyment and use of the natural resources of
- 5 the state of West Virginia and may be cited as the State
- 6 Natural Resources Law.

Sec. 2. Definitions.—As used in this chapter, unless the

- 2 context clearly requires a different meaning:
- 3 "Agency" means any branch, department or unit of the
- 4 state government, however designated or constituted.

5 "Alien" means any person not a citizen of the United
6 States.

7 "Bag limit" or "creel limit" means the maximum num-
8 ber of wildlife which may be taken, caught, killed or
9 possessed by any licensee.

10 "Board" means the water resources board of the depart-
11 ment of natural resources.

12 "Citizen" means any native born citizen of the United
13 States, and foreign born persons who have procured their
14 final naturalization papers.

15 "Closed season" means the time or period during which
16 it shall be unlawful to take any wildlife as specified and
17 limited by the provisions of this chapter.

18 "Commission" means the natural resources commission.

19 "Commissioner" means a member of the advisory com-
20 mission of the natural resources commission.

21 "Director" means the director of the department of
22 natural resources.

23 "Fishing" or "to fish" means the taking, by any means,
24 of fish, minnows, frogs, or other amphibians, aquatic tur-
25 tles, and other forms of aquatic life used as fish bait.

26 "Fur-bearing animals" shall include (a) the mink, (b)
27 the weasel, (c) the muskrat, (d) the beaver, (e) the
28 opossum, (f) the skunk, and civet cat, commonly called
29 polecat, (g) the otter, (h) the red fox, (i) the gray fox,
30 (j) the wildcat, bobcat or bay lynx, and (k) the raccoon.

31 "Game" means game animals, game birds and game fish
32 as herein defined.

33 "Game animals" shall include (a) the elk, (b) the deer,
34 (c) the cottontail rabbits and hares, (d) the fox squirrels,
35 commonly called the red squirrel, gray squirrels and red
36 squirrels, commonly called fairydiddle, and all their
37 color phases — red, gray, black or albino, and (e) the
38 raccoon.

39 "Game birds" shall include (a) the Anatidae, commonly
40 known as swans, geese, brants and river and sea ducks,
41 (b) the Rallidae, commonly known as rails, sora, coots,
42 mudhens, and gallinales, (c) the Limicolae, commonly

43 known as shorebirds, plover, snipe, woodcock, sandpipers,
44 yellowlegs, and curlews, (d) the Galli, commonly known
45 as wild turkey, grouse, pheasants, quails and partridges
46 (both native and foreign species), and (e) the Columbi-
47 dae, commonly known as doves and the Icteridae, com-
48 monly known as blackbirds, redwings and grackle.

49 "Game fish" shall include (a) brook trout, (b) brown
50 trout, (c) rainbow trout, (d) Kokanee salmon, (e) large-
51 mouth bass, (f) small-mouth bass, (g) Kentucky or
52 spotted bass, (h) pickerel, (i) muskellunge, (j) walleyed
53 pike, or pike perch, (k) rock bass, (l) white bass, (m)
54 white and black crappie, (n) blue-gill sun-fish and (o)
55 other bream.

56 "Hunt" means to pursue, chase, catch or take any wild
57 birds or wild animals.

58 "Lands" means land, waters, and all other appurtenances
59 connected therewith.

60 "Migratory birds" means any migratory game or non-
61 game birds included in the terms of conventions between
62 the United States and Great Britain and between the
63 United States and United Mexican States, known as the
64 "Migratory Bird Treaty Act", for the protection of migra-
65 tory birds and game mammals concluded, respectively,
66 August sixteen, one thousand nine hundred sixteen, and
67 February seven, one thousand nine hundred thirty-six.

68 "Nonresident" means any person who is a citizen of the
69 United States and who has not resided continuously in the
70 state of West Virginia for a period of six months immedi-
71 ately prior to the date of his application for a license or
72 permit.

73 "Open season" means the time during which the various
74 species of wildlife may be legally caught, taken, killed or
75 chased in a specified manner, and shall include both the
76 first and the last day of the season or period designated
77 by the director.

78 "Person", except as otherwise defined elsewhere in this
79 chapter, means the plural "persons", and shall include
80 individuals, partnerships, corporations, or other legal
81 entity.

82 "Preserve" means all duly licensed private game farm
83 lands, or private plants, ponds or areas, where hunting or
84 fishing is permitted under special licenses or seasons other
85 than the regular public hunting or fishing seasons.

86 "Protected birds" means all wild birds not included
87 within the definition of "game birds" and "unprotected
88 birds".

89 "Resident" means any person who is a citizen of the
90 United States and who has resided continuously in the
91 state of West Virginia for a period of six months or more
92 immediately prior to the date of his application for a
93 license or permit: *Provided, however,* That a member of
94 the armed forces of the United States who is stationed
95 beyond the territorial limits of this state, but who was a
96 resident of this state at the time of his entry into such
97 service, shall be considered a resident under the provi-
98 sions of this chapter.

99 "Roadside menagerie" means any place of business,
100 other than a commercial game farm, commercial fish pre-
101 serve, place or pond, where any wild bird, game bird, un-
102 protected bird, game animal or fur-bearing animal is kept
103 in confinement for the attraction and amusement of the
104 people for commercial purposes.

105 "Take" means to hunt, shoot, pursue, lure, kill, destroy,
106 catch, capture, keep in captivity, gig, spear, trap, ensnare,
107 wound or injure any wildlife, or attempt to do so.

108 "Unprotected birds" shall include (a) the English spar-
109 row, (b) the European starling, (c) the sharp-shinned
110 hawk, (d) the Cooper's hawk, (e) the goshawk, (f) the
111 cowbird, and (g) the crow.

112 "Wild animals" means all mammals native to the state
113 of West Virginia occurring either in a natural state or in
114 captivity, except house mice and rats.

115 "Wild birds" shall include all birds other than (a) do-
116 mestic poultry—chickens, ducks, geese, guinea fowl, pea-
117 fowls and turkeys, (b) Psittacidae, commonly called par-
118rots and paraquets, and (c) other foreign cage birds such
119 as the common canary, exotic finches and ring dove. All

120 wild birds, either (a) those occurring in a natural state
121 in West Virginia, or (b) those imported foreign game
122 birds, such as waterfowl, pheasants, partridges, quail and
123 grouse, regardless of how long raised or held in captivity,
124 shall remain wild birds under the meaning of this chapter.

125 "Wildlife" means wild birds, wild animals, game and
126 fur-bearing animals, fish (including minnows), frogs and
127 other amphibians, aquatic turtles and all forms of aquatic
128 life used as fish bait, whether dead or alive.

129 "Wildlife refuge" means any land set aside by action of
130 the director as an inviolate refuge or sanctuary for the
131 protection of designated forms of wildlife.

Sec. 3. *Department, Office of Director and Commission*
2 *Established.*—A department of natural resources, the of-
3 fice of director of the department of natural resources,
4 and a natural resources commission are hereby created
5 and established in the state government with jurisdiction,
6 powers, functions, services and enforcement processes as
7 provided in this chapter and elsewhere by law.

Sec. 4. *Director Chief Executive Officer; Appointment,*
2 *Term and Qualification; Vacancy; Removal.*—The director
3 shall be the chief executive officer of the department. Sub-
4 ject to provisions of law, he shall organize the department
5 into such offices, divisions, agencies and other units of ac-
6 tivity as may be found by him necessary and desirable in
7 the orderly, efficient and economical administration of
8 the department for the accomplishment of its objects and
9 purposes.

10 The director shall be appointed by the governor, by and
11 with the advice and consent of the senate, and shall con-
12 tinue to serve until his successor is appointed and qualified
13 as provided. On or before the first day of July, one thou-
14 sand nine hundred sixty-one, the governor shall appoint
15 the director for a term ending on the thirty-first day of
16 December, one thousand nine hundred sixty-two. Upon
17 the expiration of such term the governor shall appoint the
18 director for a term of four years commencing on the first
19 day of January, one thousand nine hundred sixty-three,
20 and, upon the expiration thereof, for successive terms of
21 four years each next thereafter. A vacancy occurring in

22 the office during any term thereof shall be filled by ap-
23 pointment as herein provided for the remainder of such
24 term.

25 The director may be removed from office by the gov-
26 ernor for cause as provided in the constitution. At the
27 time of his initial appointment, he shall be at least thirty
28 years old and shall be selected with special reference and
29 consideration given to his training, experience, capacity
30 and interest in the natural resources program as herein
31 embraced. He shall not be a candidate for or hold any
32 other public office, shall not be a member of any political
33 party committee, and shall immediately forfeit and vacate
34 his office as director in the event he becomes a candidate
35 for or accepts appointment to any other public office or
36 political party committee.

Sec. 5. Salary, Expenses, Oath and Bond of Director.—

2 The director shall receive an annual salary of twelve
3 thousand dollars, payable in equal monthly installments,
4 and shall be allowed and paid necessary expenses incident
5 to the performance of his official duties. Prior to the as-
6 sumption of the duties of his office, he shall take and sub-
7 scribe to the oath required of public officers by the con-
8 stitution of West Virginia and shall execute a bond, with
9 surety approved by the governor, in the penal sum of ten
10 thousand dollars, which executed oath and bond shall be
11 filed in the office of the secretary of state. Premiums on
12 the bond shall be paid from department funds.

*Sec. 6. Offices and Office Hours.—*The director shall
2 arrange with the general services division of the depart-
3 ment of finance and administration for adequate office
4 space, accommodations and facilities for the department
5 of natural resources in the state capitol offices. The de-
6 partment of finance and administration shall make such
7 office accommodations and facilities available and shall
8 provide for orderly servicing and maintenance thereof.
9 The offices of the director and of the department shall be
10 opened and staffed for business transactions and services
11 during regular hours as prescribed by the state board of
12 public works.

Sec. 7. *Additional Powers, Duties and Services of Director.*—In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the "Department of Natural Resources" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which and the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Fix by regulation the open seasons and the bag, creel, size, age, weight and sex limits with respect to wildlife in this state;

(7) Hold at least six meetings each year at such times and at such points within the state, as in the discretion of the director may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open seasons for their respective areas, before such seasons and bag limits are fixed;

(8) Suspend open hunting seasons upon any or all

40 wildlife in any or all counties of the state with the prior
41 approval of the governor in case of an emergency such
42 as a drought, forest fire hazard or epizootic of disease
43 among wildlife. The suspension shall continue during
44 the existence of the emergency and until rescinded by the
45 director. Suspension, or reopening after such suspension,
46 of open seasons may be made upon twenty-four hours'
47 notice by delivery of a copy of the order of suspension or
48 reopening to the wire press agencies at the state capitol;

49 (9) Supervise the fiscal affairs and responsibilities of
50 the department;

51 (10) Designate such localities as he shall determine
52 to be necessary and desirable for the perpetuation of any
53 species of wildlife;

54 (11) Enter private lands to make surveys or inspec-
55 tions for conservation purposes, to investigate for viola-
56 tions of provisions of this chapter, to serve and execute
57 warrants and processes, to make arrests and to otherwise
58 effectively enforce the provisions of this chapter;

59 (12) Acquire for the state in the name of the "De-
60 partment of Natural Resources" by purchase, condemna-
61 tion, lease or agreement, or accept or reject for the state,
62 in the name of the department of natural resources, gifts,
63 donations, contributions, bequests or devises of money,
64 security or property, both real and personal, and any in-
65 terest in such property, including lands and waters, which
66 he deems suitable for the following purposes:

67 (a) For state forests for the purpose of growing tim-
68 ber, demonstrating forestry, furnishing or protecting
69 watersheds or providing public recreation;

70 (b) For state parks or recreation areas for the purpose
71 of preserving scenic, esthetic, scientific, cultural, archae-
72 logical or historical values or natural wonders, or pro-
73 viding public recreation;

74 (c) For public hunting, trapping, or fishing grounds
75 or waters for the purpose of providing areas in which the
76 public may hunt, trap or fish, as permitted by the pro-
77 visions of this chapter, and the rules and regulations is-
78 sued hereunder;

79 (d) For fish hatcheries, game farms, wildlife research
80 areas and feeding stations;

81 (e) For the extension and consolidation of lands or
82 waters suitable for the above purposes by exchange of
83 other lands or waters under his supervision;

84 (f) For such other purposes as may be necessary to
85 carry out the provisions of this chapter;

86 (13) Capture, propagate, transport, sell or exchange
87 any species of wildlife as may be necessary to carry out
88 the provisions of this chapter;

89 (14) Exercise the powers granted by this chapter for
90 the protection of forests, and regulate fires and smoking
91 in the woods or in their proximity at such times and in
92 such localities as may be necessary to reduce the danger
93 of forest fires;

94 (15) Cooperate with departments and agencies of
95 state, local and federal governments in the conservation
96 of natural resources and the beautification of the state;

97 (16) Report to the governor each year all information
98 relative to the operation and functions of his department
99 and shall make such other reports and recommendations
100 as may be required by the governor, including an annual
101 financial report covering all receipts and disbursements
102 of the department for each fiscal year, and shall deliver
103 such report to the governor on or before the first day of
104 December next after the end of the fiscal year so covered.
105 A copy of such report shall be delivered to each house of
106 the Legislature when convened in January next following;

107 (17) Keep a complete and accurate record of all pro-
108 ceedings, record and file all bonds and contracts taken or
109 entered into, and assume responsibility for the custody
110 and preservation of all papers and documents pertaining
111 to his office, except as otherwise provided by law;

112 (18) Offer and pay, in his discretion, rewards for in-
113 formation respecting the violation, or for the apprehen-
114 sion and conviction of any violators of any of the pro-
115 visions of this chapter;

116 (19) Require such reports as he may deem to be neces-

117 sary from any person issued a license or permit under the
118 provisions of this chapter;

119 (20) Purchase as provided by law all equipment neces-
120 sary for the conduct of his department;

121 (21) Conduct and encourage research designed to fur-
122 ther new and more extensive uses of the natural resources
123 of this state and to publicize the findings of such research;

124 (22) Encourage and cooperate with other public and
125 private organizations or groups in their efforts to publicize
126 the attractions of the state;

127 (23) Accept and expend, without the necessity of ap-
128 propriation by the Legislature, any gift or grant of money
129 made to the department for any and all purposes specified
130 in this chapter, and shall account for and report on all
131 such receipts and expenditures to the governor;

132 (24) Cooperate with the state historian and other ap-
133 propriate state agencies in conducting research with
134 reference to the establishment of state parks and monu-
135 ments of historic, scenic and recreational value, and to
136 take such steps as may be necessary in establishing such
137 monuments or parks as he deems advisable;

138 (25) Maintain in his office at all times, properly in-
139 dexed by subject matter, and also in chronological se-
140 quence, all rules and regulations made or issued under
141 the authority of this chapter. Such records shall be avail-
142 able for public inspection on all business days during the
143 business hours of working days as prescribed by the state
144 board of public works;

145 (26) Act promptly and effectively, whenever in the
146 sole discretion of the director the ends of justice and the
147 interests of the state so require, through appropriate court
148 proceedings for citations and for injunctive, remedial,
149 coercive and other means and methods of relief, in the
150 prevention, abatement and correction of the pollution of
151 streams and other water areas prior and supplemental to
152 the effective operation of the procedures and processes of
153 the water resources board under the provisions of article
154 five of this chapter;

155 (27) Delegate the powers and duties of his office, ex-

156 cept the power to execute contracts, to appointees and
157 employees of the department, who shall act under the di-
158 rection and supervision of the director and for whose acts
159 he shall be responsible;

160 (28) Conduct schools, institutes and other educational
161 programs, apart from or in cooperation with other govern-
162 mental agencies, for instruction and training in all phases
163 of the natural resources program of the state; and

164 (29) Promulgate rules and regulations to implement
165 and make effective the powers and duties vested in him
166 by provisions of this chapter and take such other steps as
167 may be necessary in his discretion for the proper and ef-
168 fective enforcement of the provisions of this chapter.

Sec. 8. *Personnel Management.*—A merit system of
2 personnel management shall be established and main-
3 tained for all personnel of the department in order to in-
4 sure and provide for impartial selection of competent and
5 qualified personnel and to accord to all department em-
6 ployees rights of tenure and advancement during satis-
7 factory discharge of their duties. Employees of any
8 agency or activity absorbed in or transferred to the de-
9 partment by provisions of this chapter or elsewhere by
10 law, who then have and enjoy state merit system status,
11 shall maintain their merit system status for all purposes
12 as employees of the department, but employees of any
13 such agency or activity not so having and enjoying merit
14 system status shall be retained in department employ for
15 a period of time not exceeding twelve months unless dur-
16 ing such period of time they qualify for and attain merit
17 system status according to their merit system tenure and
18 advancement rights as other employees of the department.

19 In lieu of establishment of a merit system of personnel
20 management for the department, the director may resort
21 to and rely upon the state merit system council for per-
22 sonnel and personnel services of the department and for
23 this purpose may contribute from department funds a fair
24 share of the merit system council's expenses.

25 The director may select a personal secretary and a dep-
26 uty director of the department to serve at the director's

27 will and pleasure. The director shall fix the salary or
28 compensation of such secretary and deputy director and
29 shall prescribe their duties and responsibilities. The di-
30 rector, the secretary and deputy director shall not have
31 and enjoy merit system status, as herein provided, except
32 the deputy director, when selected from department per-
33 sonnel ranks, shall retain and be accorded all of the rights
34 of his merit system status regardless of his selection and
35 tenure as deputy director.

36 The director shall select and designate a competent and
37 qualified person as department personnel officer who shall
38 be responsible for personnel management, personnel
39 records and general personnel services. The personnel
40 officer, under supervision of the director and subject to
41 merit system rules, regulations and requirements, shall
42 prescribe qualifications, classifications and salary scales
43 for department personnel. He shall furnish to the director
44 information and data relating to qualified personnel avail-
45 able for the various offices, positions and places of em-
46 ployment and may make recommendations concerning
47 the selection, retention and advancement of personnel of
48 the department.

Sec. 9. *Fiscal Management.*—Subject to any controlling
2 rules and regulations of the department of finance and
3 administration relating to state fiscal management policies
4 and practices, the director shall establish in the depart-
5 ment an adequate budget, finance and accounting system
6 which will currently and accurately reflect the fiscal oper-
7 ations and conditions of the department at all times. The
8 department's accounting and auditing services shall be
9 on the fiscal year basis.

10 The director shall select and designate a competent and
11 qualified person as department fiscal officer who, under
12 the supervision of the director, shall be responsible for all
13 budget, finance and accounting services of the department.
14 All moneys received by the department shall be recorded
15 and shall be paid as general revenue into the state fund,
16 as provided in section two, article two, chapter twelve of
17 this code, except in cases wherein certain receipts of the

18 department are by specific provisions of this chapter re-
19 quired to be paid into some special fund or funds.

Sec. 10. *Property Management.*—The department shall
2 maintain at all times an accurate record of all of its lands,
3 interests in lands, buildings, structures, equipment and
4 other tangible properties and assets. Such record shall
5 reflect the location, utility, condition and estimated value
6 of all such properties and assets. The department shall
7 provide for the maintenance, preservation and custody of
8 all such properties and assets, and when any item or items
9 thereof become obsolete or are no longer needed, the de-
10 partment shall report thereon to the department of finance
11 and administration for disposition thereof.

12 The director shall select and designate a competent and
13 qualified person as department property officer, who shall
14 be responsible for the department's records relating to
15 its properties and assets and for the maintenance, preser-
16 vation, custody and disposition of all such properties and
17 assets as herein provided.

Sec. 11. *Public Relations.*—The department shall col-
2 lect, organize and from time to time distribute to the
3 public, through news media or otherwise, interesting facts,
4 information and data concerning the natural resources
5 of the state and the functions and services of the depart-
6 ment. The director may organize and promote lectures,
7 demonstrations, symposiums, schools and other educa-
8 tional programs relating to the state's natural resources.
9 Motion pictures, slide films and other photographic serv-
10 ices may be provided for instruction on natural resources
11 for schools, other governmental agencies, and civic or-
12 ganizations under such rules and regulations as may be
13 prescribed by the director.

14 The director shall select and designate a competent and
15 qualified person as department public relations officer,
16 who shall be responsible for the organization and manage-
17 ment of the department's public relations program. He
18 may prepare and distribute from time to time pamphlet
19 materials and other compilations and publications of the
20 department and may cooperate with other governmental

21 agencies in the publication and distribution of such
22 materials.

Sec. 12. *Surveys and Planning.*—As departmental projects or in cooperation with other governmental or private agencies, the director may organize and promote surveys and explorations relating to the state's natural resources, their utility, development and protection. The state geological and economic survey commission, the department of mines, the department of agriculture, the economic development agency and other governmental agencies and activities shall cooperate, whenever and wherever practicable to do so, with the department in its survey and exploration work.

The director shall select and designate a competent and qualified person as department surveys officer who shall be responsible for the organization, promotion and correlation of the surveys and explorations as herein provided. He shall work closely with other offices and divisions of the department in order to effect maximum development, utilization, protection and enjoyment of the state's natural resources.

Sec. 13. *Law Enforcement and Legal Services.*—The director shall select and designate a competent and qualified person to be department law enforcement officer, who shall have the title of chief conservation officer and who shall be responsible for the prompt, orderly and effective enforcement of all of the provisions of this chapter. Under the supervision of the director and subject to personnel qualifications and requirements otherwise prescribed in this chapter, the chief conservation officer shall be responsible for the selection, training, assignment, distribution and discipline of conservation officers and the effective discharge of their duties in carrying out the law enforcement policies, practices and programs of the department in compliance with the provisions of article seven of this chapter and other controlling laws and regulations. Except as otherwise provided in this chapter, he and his conservation officers are hereby authorized to enter into and upon private lands and waters to investigate com-

19 complaints and reports of conditions, conduct, practices and
20 activities considered to be adverse to and violative of the
21 provisions of this chapter and to execute writs and war-
22 rants and make arrests thereupon.

23 The attorney general and his assistants and the prose-
24 cuting attorneys of the several counties shall render to
25 the director, without additional compensation, such legal
26 services as the director may require of them in the dis-
27 charge of his duties and the execution of his powers under
28 and his enforcement of the provisions of this chapter. The
29 director, in an emergency and with prior approval of the
30 attorney general, may employ an attorney to act in pro-
31 ceedings wherein criminal charges are brought against
32 personnel of the department because of action in line of
33 duty. For such attorney services, a reasonable sum, not
34 exceeding five hundred dollars, may be expended by the
35 director in any one case.

36 The director, if he deems such action necessary, may
37 request the attorney general to appoint an assistant at-
38 torney general, who shall perform, under the supervision
39 and direction of the attorney general, such duties as may
40 be required of him by the director. The attorney general,
41 in pursuance of such request, may select and appoint an
42 assistant attorney general to serve during the will and
43 pleasure of the attorney general, and such assistant shall
44 receive a salary to be paid out of any funds made avail-
45 able for that purpose by the Legislature to the department.

Sec. 14. *Divisions Within Department.*—Divisions of
2 game and fish, of forestry, of parks and recreation, of
3 water resources, and of reclamation are hereby created
4 and established within the department. Subject to pro-
5 visions of law, the director shall allocate the functions
6 and services of the department to the divisions, offices and
7 activities thereof and may from time to time establish and
8 abolish other divisions, offices and activities within the
9 department in order to carry out fully and in an orderly
10 manner the powers, duties and responsibilities of his
11 office as director. The director shall select and designate
12 a competent and qualified person to be chief of each
13 division. The chief shall be the principal administrative

14 officer of his division and shall be accountable and re-
15 sponsible for the orderly and efficient performance of the
16 duties, functions and services thereof.

Sec. 15. *Public Land Corporation.*—The public land cor-
2 poration of West Virginia, heretofore created and estab-
3 lished, shall be continued as an activity of the department
4 of natural resources. The corporation may sue and be
5 sued, contract and be contracted with, plead and be im-
6 pleaded, and have and use a common seal. It shall be a
7 public benefit corporation composed of the governor as
8 chairman, the director of the department of natural re-
9 sources as secretary, the commissioner of agriculture, the
10 attorney general, and the director of the engineering ex-
11 periment station at West Virginia University, none of
12 whom shall receive additional compensation as members
13 of the corporation.

14 The corporation shall be vested with the title of the
15 state in public lands, the title to which now is or may here-
16 after become absolutely vested in the state of West Vir-
17 ginia by reason of any law governing the title of lands
18 within the state, except such public lands of the state as
19 may be by law specifically allocated to and used by other
20 state agencies, institutions and departments.

21 The corporation is hereby authorized and empowered to:

22 (1) Acquire from any persons or the state commis-
23 sioner of forfeited lands, by purchase, lease or other agree-
24 ment, any lands necessary and required for public use;

25 (2) Acquire by purchase, condemnation, lease or
26 agreement, receive by gifts and devises, or exchange,
27 rights of way, easements, waters and minerals suitable
28 for public use;

29 (3) Sell, purchase or exchange lands or stumpage for
30 the purpose of consolidating lands under state or federal
31 government administration;

32 (4) Negotiate and effect loans from the government of
33 the United States or any agency thereof for acquisition
34 and development of such lands as may be authorized by
35 law to be acquired for public use; and

36 (5) Expend the income from the use and development

37 of public lands for the purpose of liquidating obligations
38 incurred in the acquisition, development and administra-
39 tion of such lands, until all such obligations have been
40 fully discharged, and thereafter pay such income into the
41 state fund for general revenue purposes and uses.

42 The corporation shall have the authority to designate
43 lands to which it has title for development and adminis-
44 tration for the public use including forestation, recreation,
45 wildlife, stock grazing, agricultural rehabilitation home-
46 steading or other conservation activities and may contract
47 or lease for the proper development of oil, gas or minerals,
48 except that no contract or lease may be entered into for
49 the extraction and removal by stripping or auger mining
50 of coal, and water rights within or upon the lands or prop-
51 erty under its control. It shall convey, assign, or allot
52 lands to the title or custody of proper departments or
53 other agencies of state government for administration and
54 control within the functions of such departments or other
55 agencies as provided by law. The corporation shall make
56 proper lands available for the purpose of cooperating
57 with the government of the United States in the relief of
58 unemployment and hardship. The corporation shall re-
59 port biennially to odd-year sessions of the Legislature on
60 its public land holdings, its financial condition and its
61 operations and shall make such recommendations to the
62 Legislature as deemed proper concerning the acquisition,
63 development, disposition and use of public lands.

Sec. 16. *Natural Resources Commission.*—The natural
2 resources commission, created and established by pro-
3 visions of section three of this article, shall be a public
4 benefit corporation and as such may sue and be sued,
5 plead and be impleaded, contract and be contracted with,
6 and have and use a common seal. It shall be a commission
7 advisory to the director and to the department of natural
8 resources. The commission shall be composed of seven
9 members, known as commissioners, one from each con-
10 gressional district and the remainder from the state at
11 large, appointed by the governor, by and with the advice
12 and consent of the senate. Their terms of office shall begin
13 on the first day of July and shall be for a period of seven

14 years, except that the governor in making the initial ap-
15 pointments shall designate and define their respective
16 terms of office so that the term of one member of the com-
17 mission will expire each year. As initial appointments
18 expire, all subsequent appointments shall be for terms of
19 seven years or for the unexpired term of a member who
20 may have died, resigned or become disqualified.

21 The members of the commission shall be citizens and
22 residents of the state, selected with special reference to
23 their training and experience in relation to the principal
24 activities required of the commission, and for their ability
25 and fitness to perform their duties within the purposes of
26 this chapter. No member of the commission shall be a can-
27 didate for or hold any public office other than that of
28 member of the commission; nor shall he be a member of
29 any committee of a political party. In case a member be-
30 comes a candidate for or accepts appointment to any pub-
31 lic office or political party committee, his office as member
32 of the commission shall be immediately vacated.

Sec. 17. *Commission Organization and Services.*—Mem-
2 bers of the natural resources commission shall take and
3 subscribe to the public officer's oath prescribed by the
4 constitution before entering upon the duties of their office.
5 All such executed oaths shall be filed in the office of the
6 secretary of state. Members of the commission shall re-
7 ceive no compensation as such, but each shall be reim-
8 bursed for his actual and necessary traveling expenses
9 incurred in the performance of his official duties.

10 The director of the department shall be ex officio a
11 member of the commission and its presiding officer. A
12 majority of the commission shall constitute a quorum for
13 transaction of business. Four regular meetings of the
14 commission shall be held each year commencing on the
15 first Monday in the months of July, October, January and
16 April. Special meetings may be convened by the gov-
17 ernor, the director or by a majority of the commission.
18 The meetings of the commission shall be regularly held
19 at the office of the director, but may be held at other points
20 within the state when need therefor exists as explained

21 in the call setting forth the time and place of the meeting.
22 The director shall furnish all articles and supplies re-
23 quired by the commission in the performance of its duties
24 and shall provide necessary stenographic, secretarial and
25 clerical assistance therefor. All such materials and serv-
26 ices shall be paid for from department funds.

27 The director, at any regular or special meeting of the
28 commission, may submit to the commission any program
29 or policy matters on which he wishes to obtain the advice,
30 counsel and opinion of the commission and may consult
31 with members of the commission on functions, services,
32 policies and practices of the department at any time. The
33 commission shall serve as a body advisory to the director
34 and as such shall have the following powers and duties:

35 (1) To consider and study the entire field of legislation
36 and administrative methods concerning the forests and
37 their maintenance and development, the protection of fish
38 and game, the beautification of the state and its highways,
39 and the development of lands, minerals, waters and other
40 natural resources;

41 (2) To advise with the director concerning the con-
42 servation problems of particular localities or districts of
43 the state;

44 (3) To recommend policies and practices to the direc-
45 tor relative to any duties imposed upon him by law;

46 (4) To investigate the work of the director, and for
47 this purpose to have access at reasonable times to all offi-
48 cial books, papers, documents and records;

49 (5) To advise or make recommendations to the gov-
50 ernor relative to natural resources of the state; and

51 (6) To keep minutes of the transactions of each ses-
52 sion, regular or special, which shall be public records and
53 filed with the director.

Sec. 18. *Government Cooperation; Projects; Finances;*
2 *Properties.*—In addition to all other powers and authority
3 vested in the director, he is hereby authorized and em-
4 powered to represent and advance the interests of the
5 state of West Virginia under provisions of acts of Congress
6 now in force or hereafter enacted providing for coopera-

7 tion between the governments of the United States and
8 of the several states in the exploration, development,
9 conservation, use and enjoyment of natural resources. He
10 may acquire by purchase or lease, as in this chapter pro-
11 vided, such lands, interests in lands, forests, parks, recre-
12 ational facilities, wildlife and water areas and such other
13 properties within this state as may be required in co-
14 operative programs with any other government or gov-
15 ernments, and, with the approval of the governor, may
16 negotiate and effect self-liquidating loans with the gov-
17 ernment of the United States or any agency or agencies
18 thereof for the procurement, development and use of all
19 such properties. All such projects shall be in the interest
20 and for the benefit of the state and may be geared and
21 timed to relieve economic hardship and unemployment.

22 In order to consolidate forest tracts under either state
23 or federal administration, the director may sell, purchase
24 or exchange stumpage or lands within or adjacent to any
25 national forest purchase area.

26 The director shall study the land and water boundary
27 areas of the state and, where practicable, cooperate with
28 adjacent states in programs for the development, con-
29 servation and use of waters, forests, minerals, wildlife and
30 other natural resources.

Article 2. Game and Fish.

Section

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47. License for private game farm for propagating animals and birds for commercial purposes.
48. License for private plant or pond for propagating fish, frogs, turtles and other forms of aquatic life for commercial purposes.
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Section 1. Game and Fish Division; Organization and

- 2 *Administration.*—The chief of the division of game and
- 3 fish shall be primarily responsible for the execution and
- 4 administration of the provisions of this article as an
- 5 integral part of the natural resources program of the state
- 6 as defined and constituted in this chapter. He shall or-
- 7 ganize the division and select competent and qualified per-

8 sonnel therefor so as to effect an orderly, efficient and
9 economical division organization.

Sec. 2. *Violations; Punishment and Penalties.*—When
2 no specific punishment or penalty is otherwise provided
3 for violations of the provisions of this article, any person
4 violating any provision hereof shall be guilty of a misde-
5 meanor offense, and, upon conviction thereof, shall be sub-
6 ject to the punishment and penalties prescribed in section
7 nine, article seven of this chapter.

PART I. WILDLIFE MANAGEMENT

Sec. 3. *State Ownership of Wildlife.*—The ownership of
2 and title to all wild animals, wild birds, both migratory
3 and resident, and all fish, amphibians, and all forms of
4 aquatic life in the state of West Virginia is hereby de-
5 clared to be in the state, as trustee for the people. No
6 such wildlife shall be taken or hunted in any manner, or
7 at any time, unless the person so taking or hunting the
8 same shall consent that the title thereto shall be and re-
9 main in the state of West Virginia for the purpose of regu-
10 lating the taking, hunting, using and disposing of the same.
11 The taking or hunting of wildlife at any time or in any
12 manner by any person shall be deemed such consent:
13 *Provided, however,* That all fish, frogs and other aquatic
14 life in privately-owned ponds are, and shall remain, the
15 private property of the owner or owners of such privately-
16 owned ponds, and that such fish, frogs and other aquatic
17 life in such privately-owned ponds may be caught, taken
18 or killed by such owner or owners at any time.

Sec. 4. *Possession of Wildlife.*—Except as otherwise
2 provided by law, no person shall have in his possession
3 during closed seasons any wildlife. Wildlife which may
4 be lawfully taken may be had in possession during the
5 open season therefor, and for sixty days thereafter: *Pro-*
6 *vided, however,* That any person upon application to the
7 director may be issued a permit authorizing the possession
8 of the flesh of such wildlife as the director may determine
9 for an additional period not to exceed four months.
10 Wildlife lawfully taken outside of this state shall be
11 subject to the same laws and regulations as that taken
12 within this state, but may be possessed for a period of

13 sixty days after the date such wildlife was legally brought
14 into this state, and for an additional period thereafter, not
15 to exceed four months, by securing a permit from the
16 director.

17 Migratory wild birds shall be possessed only in accord-
18 ance with the "Migratory Bird Treaty Act" and regula-
19 tions thereunder.

20 Possession of any wildlife, or any part thereof, except
21 during their respective open seasons and for sixty days
22 thereafter, shall be presumptive evidence that the same
23 was taken unlawfully by the possessor, unless such per-
24 son has been issued a permit as authorized by this section.

25 The restrictions in this section do not apply to the di-
26 rector or his duly authorized agents, who may, in any
27 manner, take or maintain in captivity at any time any
28 wildlife for the purpose of carrying out the provisions of
29 this chapter.

Sec. 5. *Unlawful Methods of Hunting and Fishing.*—

2 Except as authorized by the director, it shall be unlawful
3 at any time for any person to:

4 (1) Shoot at or to shoot any wild bird or animal unless
5 it is plainly visible to him;

6 (2) Dig out, cut out, or smoke out, or in any manner take
7 or attempt to take any live wild animal or wild bird out
8 of its den or place of refuge, except as may be authorized
9 by regulations promulgated by the director or by law;

10 (3) Make use of, or take advantage of, any artificial
11 light in hunting for, or taking, any wild animals or wild
12 birds, except that artificial lights such as are ordinarily
13 carried in the hand or on the person may be used for the
14 purpose of taking raccoon, opossum or skunk; or to throw
15 or cast the rays of a spotlight, headlight, or other artificial
16 light, from any vehicle, on any animal or game bird, or
17 attempt to do so, while having in his or their possession
18 or under their control, or in any vehicle or conveyance in
19 which they may be traveling, a cased or uncased firearm
20 or other implement whereby any wild animal or wild bird
21 could be killed, even though such animal be not shot at,
22 injured or killed. The provisions of this subdivision
23 shall not apply if it shall be proven that the headlights of a
24 motor vehicle while traveling on a highway in the usual

25 way, cast a light upon such animal, on or adjacent to such
26 highway, and there was no attempt or intent to locate
27 such animal;

28 (4) Hunt for, take, kill, wound or shoot at wild animals
29 or wild birds from an airplane, or other airborne convey-
30 ance, an automobile, or other land conveyance, or from a
31 motor-driven water conveyance, except as may be au-
32 thorized by regulations promulgated by the director;

33 (5) Take any beaver or muskrat by any means other
34 than by trap;

35 (6) Catch, capture, take or kill by seine, net, bait, trap
36 or snare or like device of any kind, any wild turkey, ruffed
37 grouse, pheasant or quail;

38 (7) Destroy or attempt to destroy needlessly or wil-
39 fully the nest or eggs of any wild bird or have in his pos-
40 session such nest or eggs unless authorized to do so under
41 regulations or under a permit by the director;

42 (8) Except as provided in section six of this article,
43 carry an uncased or loaded gun in any of the woods of this
44 state except during the open firearms hunting season for
45 game animals and nonmigratory game birds within any
46 county of the state, unless he has in his possession a per-
47 mit in writing issued to him by the director: *Provided,*
48 *however,* That this section shall not prohibit hunting or
49 taking of unprotected species of wild animals and wild
50 birds and migratory game birds, during the open season,
51 in the open fields, open waters and open marshes of the
52 state;

53 (9) Except as provided in section six of this article,
54 carry an uncased or loaded gun on Sunday in any woods
55 or on any highway, railroad right of way, public road,
56 field or stream of this state, except at a regularly used
57 rifle, pistol, skeet, target or trap shooting ground or range;

58 (10) To have in his possession a loaded firearm or a
59 firearm from the magazine of which all shells and cart-
60 ridges have not been removed, in or on any vehicle or con-
61 veyance, or its attachments, within the state, except as
62 may otherwise be provided by law or regulation. Except
63 as hereinafter provided, between five o'clock postmeridian
64 of one day and seven o'clock antemeridian, eastern stand-

ard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken on Sunday any wild animals or wild birds: *Provided, however,* That traps previously and legally set may be tended on Sunday, if the person so doing shall not have firearms or long bow of any description in his possession;

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Possess a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line, and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: *Provided, however,* That snaring of any species of suckers, carp, fallfish and creek chubs through the ice shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed

105 season, or to fish for, catch, take or kill any fish, amphibian
106 or aquatic life which is protected by the provisions of this
107 chapter or regulations of the director, or the sale of which
108 is prohibited;

109 (18) Hunt, catch, take, kill, capture, pursue, transport,
110 possess or use any migratory game or nongame birds in-
111 cluded in the terms of conventions between the United
112 States and Great Britain and between the United States
113 and United Mexican States for the protection of migratory
114 birds and game mammals concluded, respectively, August
115 sixteen, one thousand nine hundred sixteen, and February
116 seven, one thousand nine hundred thirty-six, except dur-
117 ing the time and in the manner and numbers prescribed
118 by the Federal Migratory Bird Treaty Act and regulations
119 made thereunder;

120 (19) Kill, take, catch, or have in his possession living
121 or dead, any wild bird, other than a game bird; or expose
122 for sale, or transport within or without the state any such
123 bird, except as aforesaid. No part of the plumage, skin
124 or body of any protected bird shall be sold or had in
125 possession for sale, except mounted or stuffed plumage,
126 skin, bodies or heads of such birds legally taken and
127 stuffed or mounted, irrespective of whether such bird
128 was captured within or without this state, except the
129 English or European sparrow (*Passer domesticus*),
130 starling (*Sturnus vulgaris*), sharp-shinned hawk (*Ac-
131 cipiter striatus*), Cooper's hawk (*Accipiter cooperii*), gos-
132 hawk (*Accipiter gentilis*), crow (*Corvus brachyr-
133 hynchos*) and cowbird (*Molothrus ater*), which shall
134 not be protected and the killing thereof at any time is
135 lawful;

136 (20) Use dynamite or any like explosives or poisonous
137 mixture placed in any waters of the state for the purpose
138 of killing or taking fish. Any person violating the pro-
139 visions of this subdivision shall be guilty of a felony, and,
140 upon conviction thereof, shall be imprisoned for not less
141 than six months nor more than three years, and, in the
142 discretion of the court, may be fined not more than five
143 hundred dollars;

144 (21) Have both a bow and a gun in the fields or woods
145 at the same time;

146 (22) Have a crossbow in the woods or fields or use a
147 crossbow to hunt for, take or attempt to take any wildlife;

148 (23) Take or attempt to take turkey, bear, elk or deer
149 with any arrow unless the same is equipped with a point
150 having at least two sharp cutting edges measuring in ex-
151 cess of three fourths of an inch wide;

152 (24) Take or attempt to take any wildlife with an ar-
153 row having an explosive head or shaft;

154 (25) Shoot an arrow across any public highway or from
155 aircraft, motor-driven watercraft, motor vehicle or other
156 land conveyance; and

157 (26) Permit any dog owned by him or under his con-
158 trol to chase, pursue or follow upon the track of any game
159 animal or game bird, either day or night, between the first
160 day of May and the fifteenth day of August next follow-
161 ing: *Provided, however,* That dogs may be trained on game
162 animals and game birds, except deer and wild turkeys,
163 during the closed season on such game animals and game
164 birds (the period from May first to August fifteenth, ex-
165 cepted); provided the person training said dogs does not
166 have firearms or other implements in his possession where-
167 by game animals or game birds could be taken or killed.

Sec. 6. *Carrying Gun on Landowner's Land.*—Notwith-
2 standing any other provisions of this chapter, it shall be
3 lawful for a bona fide resident landowner of this state,
4 any member of said landowner's family and any bona fide
5 tenant of said landowner, to carry an uncased gun at any
6 time, whether accompanied by or without a dog, in their
7 regular pursuits in caring for and looking after such land-
8 owner's livestock or poultry on his land and on any lands
9 leased or rented by him for livestock or poultry husbandry
10 purposes.

Sec. 7. *Hunting, Trapping, Fishing on Lands of An-*
2 *other; Damages and Compensation.*—It shall be unlawful
3 for any person to shoot, hunt, fish or trap upon the fenced,
4 enclosed or posted grounds or lands of another person or
5 to peel trees or timber, build fires or do any other act or
6 thing thereon in connection with or auxiliary to shooting,
7 hunting, fishing or trapping on such lands without per-

8 mission in writing from the owner, tenant or agent of such
9 owner, and every person hunting, fishing, shooting or
10 fowling upon such lands shall have in his possession such
11 written permission when so doing.

12 Any person who, for the purpose of, or while hunting,
13 trapping or fishing, shall, without the permission of the
14 owner, tenant or agent of the owner, enter upon the land
15 of another and while thereon shall kill or injure any do-
16 mestic animal or fowl, or shall cut, destroy or damage
17 any bars, gates or fence, or any part thereof, or shall leave
18 open any bars or gates thereon resulting in damage to the
19 owner or occupant thereof, shall be guilty of a misde-
20 meanor, and in addition shall be liable to the owner or
21 person suffering such damage for all costs and damages
22 resulting therefrom. The officers charged with the en-
23 forcement of the provisions of this chapter shall have the
24 duty to enforce the provisions of this section if requested
- 25 to do so by such owner, lessee, person or agent, but not
26 otherwise.

Sec. 8. *Posting Unenclosed Lands.*—The owner, lessee
2 or other person entitled to possession of unenclosed lands
3 may have erected and maintained signs or placards legibly
4 printed, easily discernible, conspicuously posted and rea-
5 sonably spaced, so as to indicate the territory in which
6 hunting, trapping or fishing is prohibited.

7 Any person who enters upon the unenclosed lands of
8 another which have been lawfully posted, for the purpose
9 of hunting, trapping or fishing, shall be guilty of a misde-
10 meanor. The officers charged with the enforcement of
11 the provisions of this chapter shall have the duty to en-
12 force the provisions of this section if requested to do so
13 by such owner, lessee, person or agent, but not otherwise.

Sec. 9. *Unlawful Posting of Lands.*—It shall be unlawful
2 and shall constitute a misdemeanor offense for any per-
3 son or his agent or employee wilfully to post any notice
4 or warning or wilfully to ward, drive or attempt to drive
5 any person off, or prevent his hunting or fishing on, any
6 land not owned or lawfully occupied by such person, his
7 agent, or employee, unless such land is a lawfully estab-
8 lished game or fish preserve.

Sec. 10. *Unlawful to Deface Signs.*—It shall be unlawful and shall constitute a misdemeanor offense for any person to destroy, tear down, shoot at, deface or erase any printed matter or signs placed or posted by or under the authority of this chapter: *Provided, however,* That this section shall not apply to the owner, his agents, tenants or lessees, of the lands on which such signs or printed matter are posted. Each such sign so destroyed, torn down, shot at, defaced or erased shall be considered a separate offense under this section.

Sec. 11. *Sale of Wildlife; Transportation of Same.*—No person, except those legally licensed to operate private game preserves for the purpose of propagating game for commercial purposes, and those legally licensed to propagate or sell fish, amphibians, and other forms of aquatic life, shall purchase or offer to purchase, sell or offer to sell, expose for sale, or have in his possession for the purpose of sale any wildlife, or part thereof, which has been designated as game animals, fur-bearing animals, game birds, game fish or amphibians, or any of the song or insectivorous birds of the state, or any other species of wildlife which the director may designate: *Provided, however,* That raccoon pelts taken during the legal season may be sold: *Provided further,* That hide, head, antlers and feet of a legally killed deer and the hide, head, skull and feet of a legally killed black bear may be sold.

No person, including a common carrier, shall transport, carry or convey, or receive for such purposes any wildlife, the sale of which is prohibited, if such person knows or has reason to believe that such wildlife has been or is to be sold in violation of this section.

The selling or exposing for sale, having in possession for sale, transporting or carrying in violation of this section shall each constitute a separate misdemeanor offense. Notwithstanding the provisions of this or any other section of this chapter, any game birds or game bird meats sold by licensed retailers may be served at any hotel, restaurant or other licensed eating place in this state.

Sec. 12. *Transportation of Wildlife out of State.*—No person shall at any time transport or have in his posses-

3 sion with the intention of transporting beyond the limits
4 of the state, any species of wildlife or any part thereof
5 killed, taken, captured or caught within this state: *Pro-*
6 *vided, however,* That a nonresident legally entitled to
7 hunt and fish in this state may take with him personally,
8 when leaving the state, any wildlife that he has lawfully
9 taken or killed, not exceeding, during the open season, the
10 number that any person may lawfully take or kill in any
11 two days. This section shall not apply to persons legally
12 entitled to propagate and sell wild animals, wild birds,
13 fish, amphibians and other forms of aquatic life.

Sec. 13. *Importation and Liberation of Wildlife.*—No
2 person shall transport into or have in his possession with-
3 in this state for purposes of liberation, or liberate within
4 this state, any live wildlife from without the state, except
5 as authorized by permit from the director. The director
6 may issue such permit at his discretion, fix the terms
7 thereof and revoke it at his pleasure.

Sec. 14. *Propagation of Wildlife for Commercial Pur-*
2 *poses.*—No person shall propagate wildlife for commercial
3 purposes except when licensed to do so as provided in
4 section forty-seven of this article.

Sec. 15. *Permit to Kill Deer Causing Damage to Cul-*
2 *tivated Crops, Fruit Trees or Commercial Nurseries.*—
3 Whenever it shall be found that deer are causing damage
4 to cultivated crops, fruit trees or commercial nurseries,
5 the owner or lessee of the lands on which such damage is
6 done may report such finding to the conservation officer
7 of the county in which such lands are located or to the di-
8 rector. The director shall then investigate the reported
9 damage and if found substantial may issue a permit to the
10 owner or lessee to kill one or more deer in the manner
11 prescribed by the director. No such permit may be issued
12 to an owner or lessee when such lands are posted against
13 public hunting of deer.

14 The first deer killed under such permit may be retained
15 by the permittee for food. He shall, however, within forty-
16 eight hours after such kill, notify the director or the con-
17 servation officer for the county in which such kill was
18 made.

19 The permittee, upon killing any additional deer under
20 this permit, shall immediately dress the carcass by re-
21 moving the entrails and shall remove the deer killed to
22 his residence or other specified place of safekeeping.
23 Within twenty-four hours after the kill, he shall give
24 notice thereof to the director or a conservation officer for
25 the county in which such kill was made and thereupon
26 the director or such conservation officer shall see that the
27 carcass is removed.

Sec. 16. *Dogs Chasing Deer; Confiscation and Disposition; Destruction.*—No person shall permit his dogs to
2 hunt or chase deer. A conservation officer shall take into
3 possession any dog known to have hunted or chased deer
4 and the director shall advertise in a newspaper of general
5 circulation in the county that such dog is in his possession,
6 giving a description of the dog and stating the circum-
7 stances under which it was taken. He shall hold the dog
8 for a period of ten days. If, within ten days, the owner
9 does not claim the dog, the director shall destroy it. In
10 this event the cost of keeping and advertising shall be paid
11 by the director. If, within ten days, the owner claims the
12 dog, he may repossess it on the payment of costs of ad-
13 vertising and the cost of keep, not exceeding fifty cents
14 per day. A conservation officer, or any officer or employee
15 of the director authorized to enforce the provisions of this
16 section, after a bona fide but unsuccessful effort to capture
17 dogs detected chasing or pursuing deer, may kill such
18 dogs.
19

Sec. 17. *Hunting Fur-bearing Animals; Possession of Fur; Disturbing Traps of Another.*—No person shall hunt,
2 capture, trap, take or kill fur-bearing animals except as
3 authorized by regulation of the director. Except as au-
4 thorized by the director, no person shall have in his pos-
5 session the fresh skin, or part thereof, of any fur-bearing
6 animal, except beaver, within the period beginning ten
7 days after the end of the open season on such fur-bearing
8 animal and ending with the first day of the next succeed-
9 ing open season. No person shall disturb properly mark-
10 ed traps of another person, kill, remove or take a fur-bear-
11 ing animal from the trap of another person without spe-
12

13 cific authorization of the owner of the trap, except upon
14 land where the owner of such trap may have placed it
15 without right or permission.

Sec. 18. *Number and Types of Traps.*—The director
2 shall have the power and authority to regulate the num-
3 ber, kind and type of traps to be used in the catching or
4 trapping of any game or fur-bearing animals.

Sec. 19. *Marking of Traps.*—All traps used for taking
2 of any game or fur-bearing animal shall be marked with a
3 durable plate or tag, attached to the trap, trap chain, or
4 set, bearing the name and address of the owner of said
5 trap.

Sec. 20. *Trapping Beaver.*—No person shall at any time:

2 (1) Set or maintain more than the number of beaver
3 traps, or groups of beaver traps, established as the season
4 limit in any one year by the director;

5 (2) Set any traps for beaver within fifteen feet of the
6 water line on the structure of any beaver house;

7 (3) Have in his possession an unsealed beaver hide, or
8 part thereof, within the period beginning thirty days after
9 the end of the open season and ending with the first day
10 of the next succeeding open season for beavers; and

11 (4) Destroy, disturb, or in any manner interfere with
12 dams, houses or burrows of beavers while trapping for or
13 attempting to trap for beavers.

14 If any person shall unintentionally trap and kill more
15 beavers than fixed by regulation as the season bag limit,
16 he shall, within twenty-four hours thereafter, deliver said
17 beaver or beavers to a conservation officer.

Sec. 21. *Sealing Beaver Pelts or Skins.*—Each licensee
2 holding a resident state-wide beaver trapping license shall
3 present for sealing, within thirty days after the close of a
4 legal open season, all beaver pelts or skins taken under
5 said license to a designated representative of the depart-
6 ment. The resident state-wide beaver trapping license,
7 countersigned by the owner, lessee or other person en-
8 titled to the possession of such lands, on which beaver
9 were trapped, shall accompany all such pelts or skins. A
10 seal provided by the department shall be affixed to each

11 beaver pelt or skin and shall remain attached to the skin
12 until such pelt or skin has been tanned and processed into
13 commercial fur. The sealing fee shall be one dollar per
14 pelt.

Sec. 22. *Hunting Deer; Report to Director; Tagging.*—

2 Any person who kills a legal deer during the open season
3 shall deliver same for inspection and tagging to a conser-
4 vation officer or an official checking station set up for that
5 purpose by the commission during the open season.

Sec. 23. *Outfitter and Guide Services; Definition; Ex-*

2 ceptions.—Services of outfitters and guides for the benefit
3 and convenience of hunters and fishermen in this state are
4 recognized as essential, and such outfitters and guides may
5 be licensed and authorized to serve as provided in this
6 article.

7 The word "outfitter", as used herein, shall mean and
8 include any person who, operating from any temporary or
9 permanent camp, private or public lodge, or private or
10 incorporated home situate within this state, provides, for
11 monetary profit or gain, saddle or pack animals or other
12 animals, vehicles, boats, conveyances or equipment, or
13 guide services for any person or persons hunting game
14 animals or game birds or fishing in this state. The term
15 "outfitter" shall not include, however, any person who oc-
16 casionally, for accommodation or favor rather than profit
17 or gain, rents equipment to hunters or fishermen as a
18 service incidental to his principal occupation or business
19 without advertising outfitter or guide services or holding
20 out to the public his offering of such services. The term
21 "guide", as used herein, shall be construed to include and
22 embrace outfitter services and the term "outfitter" shall
23 be construed to include and embrace guide services, but
24 the applicant for any license hereunder may in his appli-
25 cation elect whether he wishes to be designated as an out-
26 fitter or as a guide.

Sec. 24. *Outfitter and Guide Qualifications; Investiga-*

2 tion and Determination Thereof.—Each outfitter and guide
3 licensed under the provisions hereof shall be a financially
4 responsible citizen of the United States of America and
5 shall have been a resident of the state of West Virginia for

6 a period of at least one year immediately prior to the date
7 of his license application. He shall possess and inventory
8 proper and adequate materials and equipment to provide
9 for hunters and fishermen the services and conveniences
10 he advertises. All such materials and equipment shall be
11 safe and free of infection and conditions inimical to the
12 health and well-being of hunters, fishermen and their trav-
13 eling, camping and lodging companions.

14 The director shall cause all outfitter and guide appli-
15 cants to be investigated and shall make a determination
16 of their qualifications prior to the issuance or refusal of
17 licenses thereto.

Sec. 25. *Outfitter and Guide License Applications; Con-
2 tents; National Forest Requirements.*—Each applicant for
3 an outfitter or guide license shall file with the director a
4 verified application setting forth the applicant's name, his
5 address, the property possessed and to be used in the pro-
6 posed outfitter and guide services, the area within which
7 he proposes to serve, his citizenship, his age and such
8 other data and information as may be prescribed and re-
9 quired by the director on the application forms to be fur-
10 nished by the department. Each such application, when
11 filed by the applicant, shall be approved and signed by
12 three resident real property owners of the county in which
13 such applicant resides.

14 Before any outfitter or guide license shall be issued for
15 serving hunters or fishermen in any national forest areas
16 within this state, the applicant shall obtain from the su-
17 pervisor of such national forest area a designation of the
18 camp site or other site from which the outfitter or guide
19 proposes to operate therein and shall likewise obtain from
20 such supervisor any other authority or permit to so op-
21 erate in such national forest area, together with copies of
22 any rules and regulations of the forest incident to main-
23 tenance of camps, sanitary conditions, and prevention of
24 forest fires and water pollution. The applicant shall sat-
25 isfy the director that he has obtained such designation,
26 permit, authority and rules and regulations, as may be
27 required, as a prerequisite to the director's consideration
28 of the applicant's license application.

2 Sec. 26. *Outfitter's or Guide's License and Bond; Revo-*
3 *cation of License; Penalties.*—When satisfied as to the
4 applicant's qualifications for an outfitter's or guide's li-
5 cense and upon receipt of a fee of ten dollars therefor, the
6 director shall issue such license which shall be for the
 calendar year therein designated.

7 Immediately upon the issuance of an outfitter's or
8 guide's license and before any outfitter's or guide's serv-
9 ices are offered or rendered thereunder, the licensee shall
10 execute a surety bond in the penal sum of one thousand
11 dollars payable to the state of West Virginia and condi-
12 tioned upon the faithful and reliable discharge of his serv-
13 ices under and pursuant to such license. Such bond shall
14 be approved as to form by the attorney general and as to
15 surety by the director, and when so executed and ap-
16 proved, shall be filed in the office of the director. Such
17 bond shall be for the life of the license.

18 The director is hereby authorized to revoke and cancel
19 any such license for failure of the licensee to give the bond
20 herein required, for licensee's violation or disregard of
21 any of the provisions of this chapter, upon licensee's con-
22 viction of crime, or for any other reason or cause justify-
23 ing refusal of the license to the licensee upon a new ap-
24 plication therefor. The director shall afford a licensee an
25 opportunity to be heard upon the revocation and cancel-
26 lation of the license.

27 No person shall act or serve as a guide or outfitter, as
28 defined in this article, without procuring and having on
29 his person at the time a valid license from the director
30 authorizing him so to do. Any person violating this pro-
31 vision shall be guilty of a misdemeanor, and, upon convic-
32 tion thereof, may be fined not exceeding one hundred dol-
33 lars or confined in the county jail not exceeding ninety
34 days, or, in the discretion of the court, be both fined and
35 imprisoned within the limits herein prescribed.

PART II. LICENSES AND PERMITS

2 Sec. 27. *Necessity for Licensing.*—Except as otherwise
3 provided by law, no resident who has reached his fif-
 teenth birthday, and no nonresident, regardless of age,

4 shall at any time take, hunt, pursue, trap for, kill or chase
5 any wild animals, wild birds, or fish for, take, kill or
6 catch any fish, amphibians or aquatic life of any kind
7 whatsoever in this state without first having secured a
8 license or permit, and then only during the respective
9 open seasons. No person under the age of fifteen years
10 shall hunt or chase any wild animals or wild birds upon
11 lands of another unless accompanied by a licensed adult.

12 A resident or nonresident member of any club, organ-
13 ization or association, or persons owning or leasing a
14 game preserve, or fish preserve, plant or pond in this
15 state shall not hunt or fish therein without first securing
16 a license or permit as required by law.

17 Licenses and permits shall be of the kinds and classes
18 set forth in this article, and shall be conditioned upon
19 the payment of the fees established therefor.

Sec. 28. *When Licenses or Permits Not Required.*—Per-
2 sons in the following categories shall not be required to
3 obtain licenses or permits as indicated:

4 (a) Bona fide resident landowners or their resident
5 children, or bona fide resident tenants of such land to
6 hunt and fish on their own land during open seasons in
7 accordance with laws and regulations applying to such
8 hunting and fishing unless such lands have been desig-
9 nated as a wildlife refuge or preserve; and

10 (b) Any bona fide resident of this state who is totally
11 blind may fish in this state without obtaining a fishing
12 license to do so. A written statement or certificate from
13 a duly licensed physician of this state showing the said
14 resident to be totally blind shall serve in lieu of fishing
15 license and shall be carried on the person of said resident
16 at all times while he is fishing in this state.

Sec. 29. *Licensing Aliens.*—Persons, not citizens of the
2 United States, shall at no time, except when licensed to
3 do so, hunt, trap, pursue, kill, catch or take any wild
4 animals or wild birds, have in their possession firearms
5 of any kind, or fish for, capture, catch, kill or take any
6 fish, amphibians or other forms of aquatic life in this
7 state.

8 Aliens desiring to procure licenses shall first apply to
9 the director for a permit to secure such license. If the
10 director satisfies himself that the applicant is entitled to
11 such license, and will observe the laws of this state, and
12 particularly the provisions of this chapter, he may issue
13 the permit. Permits once issued remain in force until
14 revoked.

Sec. 30. *Application and Statement of Eligibility for
2 Licenses; Procuring License in Violation of Chapter.*—It
3 shall be the duty of every person who makes application
4 for and procures any class of license for himself or an-
5 other to inform correctly the issuing authority that the
6 applicant is eligible and fulfills the prerequisites of this
7 chapter in respect to age, citizenship and residence which
8 are necessary to entitle such person to have and hold the
9 class of license applied for. In the case of an alien, the
10 applicant shall produce the permit issued by the director.
11 The possession of any class of license by any licensee shall
12 presume that such licensee or his agent has duly informed
13 the issuing authority that the licensee in question was
14 eligible to have, hold and procure the class of license so
15 issued. It shall be unlawful for any person to procure a
16 license in violation of the provisions of this chapter. It
17 shall not be necessary for the state to prove, in any pro-
18 ceeding for an offense hereunder, that false statements
19 were or were not made, if it be established that the li-
20 censee possessed a class of license he was not entitled to
21 possess, or the license procured by the offender for another
22 was of a class the licensee was not entitled to possess.

Sec. 31. *Size and Form of License and Tag; Contents;
2 Unlawful to Alter Licenses or Permits.*—The size, content
3 and form of all licenses, tags, and permits shall be pre-
4 scribed by the director. The information which a licensee
5 is required to furnish shall be placed upon the license by
6 the license issuing authority before delivery of such
7 license to the licensee.

8 It shall be unlawful for any person to alter, mutilate, or
9 deface any license, tag, or permit, or the entries thereon,
10 for the purpose of evading the provisions of this chapter.

Sec. 32. *Issuance of Licenses; Duplicate Licenses.*—The clerk of the county court in each county and such other persons as are designated by the director shall be the license issuing authorities hereunder. Each issuing authority shall issue a license to a license applicant if, in the opinion of such authority, the license applicant is legally entitled to obtain the license applied for and pays the proper fee therefor.

All materials and supplies necessary for the issuance of licenses shall be furnished by the director to every person authorized to issue the licenses.

Each license shall bear a serial number and shall be signed by the issuing authority. The issuing authority shall deliver to the licensee any badge, tag, or other container required to be worn by the licensee. The issuing authority shall keep an accurate record, in the form and manner prescribed by the director, of all licenses issued and of all money collected as license fees.

Any license issuing authority may issue a duplicate license, to replace any lost, destroyed or damaged license, upon receipt of a verified application therefor duly executed by the original license holder and the payment by such applicant to the issuing authority of a duplicate license fee of one dollar, which shall be paid to the director as provided in section thirty-four hereof.

Sec. 33. *Authority of Director to Designate Agents to Issue Licenses; Bonds; Fees.*—The director shall have authority to appoint within any county as many persons as his agents, with authority to issue licenses under the provisions of this article, as may, in his opinion, be necessary, in addition to the clerk of the county court of the county, to serve the convenience of the public in procuring such licenses. Each person so appointed as such agent and license issuing authority shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director at not less than one thousand dollars, conditioned upon the faithful performance of his obligation to issue licenses only in conformity with the provisions of this article and to account for all license fees received by him.

16 The form of such bond shall be prescribed by the attorney
17 general. No person, other than those designated as issuing
18 agents by the director, shall sell licenses, or buy the same
19 for purposes of resale.

20 Every person making application for any licenses shall
21 pay, in addition to the license fee prescribed therefor in
22 the later sections of this article, an additional fee of
23 twenty-five cents as compensation for the person issuing
24 the license, except when such license is purchased from
25 a state or county official: *Provided, however,* That only
26 one fee of twenty-five cents shall be collected for issuing
27 combination resident state-wide hunting and fishing
28 Class A-B licenses.

Sec. 34. *Disposition of License Fees; Reports of Agents;
2 Special Funds and Uses.*—All persons in this state who
3 receive money for licenses and permits required by this
4 chapter shall, on the first day of each month, pay over
5 to the director all moneys so collected by them during
6 the preceding month. Such payment shall be accompanied
7 by a report showing, in the case of license money, the
8 name of the county, the class of license sold, the names
9 and addresses of the persons paying the same, the date of
10 the receipt thereof, the signature of the person receiving
11 and remitting such funds, and such other information as
12 the director may deem necessary.

13 Except where other provisions of this chapter specif-
14 ically require and direct payment of any such moneys
15 into designated funds for specific uses and purposes, all
16 moneys so received by the director hereunder shall be
17 by him promptly paid into the state treasury and shall
18 be credited to the department of natural resources and
19 shall be further credited to and kept in a separate fund
20 designated "License Fund—Game and Fish", which shall
21 be used and paid out, upon order of the director, solely
22 for the conservation, protection, propagation and distribu-
23 tion of fish, frogs, wild game and wild birds and fowls in
24 this state pursuant to the provisions of this chapter.

Sec. 35. *Period during Which License Valid.*—Licenses
2 and permits provided by this chapter shall be valid

3 through the last day of the calendar year for which they
4 are issued unless otherwise provided by law.

Sec. 36. *When License to Be Carried and Exhibited;
2 Carrying License of Another.*—Except as otherwise pro-
3 vided by law, no person shall hunt, take, pursue, trap for,
4 kill, catch or chase for sport any wild animal or wild bird;
5 or fish for, take, kill or catch any fish or amphibians of
6 any kind whatsoever in this state unless he shall have
7 attached and displayed upon his outer garment a valid
8 license issued to him.

9 It shall be unlawful for any person to use at any time
10 any license other than those legally issued to him, or
11 transfer a license to another person.

Sec. 37. *Display of Bag and Creel Contents.*—Any per-
2 son having in his possession in or near the fields or woods,
3 or about streams of this state, any dog, gun, fishing rod or
4 other hunting, fishing or trapping paraphernalia, shall,
5 upon demand of any officer authorized to enforce the
6 provisions of this chapter, state his correct name and
7 address, and shall exhibit for inspection his license, if
8 such license is required by law, and all firearms and wild-
9 life which he may have in his possession.

Sec. 38. *Refusal or Revocation of License or Permit.*—
2 The director may, for cause, refuse a license or permit to
3 any person or revoke a license or permit which had been
4 granted.

5 In case the director desires to refuse a license to any
6 person, he shall notify personnel authorized to issue
7 licenses, in counties where it is expected such license may
8 be sought, of the name and address of such person and
9 such other information in relation thereto as he may
10 desire to give, and such issuing authority shall not issue
11 a license to such person thereafter, and shall report to
12 the director any application made therefor. In case any
13 issuing authority shall, after receiving such notice, know-
14 ingly issue such license, he shall be guilty of a misde-
15 meanor. The director may revoke any such license so
16 wrongfully issued. The violation of any of the provisions.
17 of this chapter by any person holding a license shall be

18 sufficient cause for the director to refuse or revoke a
19 license.

20 All licenses and permits authorized by this chapter to
21 be granted shall be deemed to have been granted by the
22 director, and the power and authority to revoke such
23 licenses is vested in the director. Upon the revocation of
24 any license, the one to whom the same was issued shall,
25 upon having knowledge of such revocation, forthwith
26 deliver the license and tag so issued to him to the director,
27 his agent, or the clerk of any county court. A clerk shall
28 transmit the same to the director.

29 The hunting license of any person convicted under sec-
30 tion eleven, article seven, chapter sixty-one of the code
31 of West Virginia, one thousand nine hundred thirty-one,
32 as amended, shall be revoked, and such person shall not
33 be issued any other hunting license for a period of five
34 years.

Sec. 39. Class A Resident State-wide Hunting License.

2 —A Class A license shall be a resident state-wide hunting
3 license and shall entitle the licensee to hunt all game in
4 all counties of the state. It shall be issued only to citizens
5 of the United States who are residents of this state. The
6 fee therefor shall be three dollars, except that, in any
7 case where a licensee purchases a Class A and a Class B
8 license at the same time, the fee for a Class A license
9 shall be two dollars and fifty cents.

Sec. 40. Class B Resident State-wide Fishing License.

2 —A Class B license shall be a resident state-wide fish-
3 ing license and shall entitle the licensee to fish for all
4 fish in all counties of the state. It shall be issued
5 only to citizens of the United States, and unnaturalized
6 persons possessing the permit mentioned in section
7 twenty-eight of this article, who are residents of this
8 state. The fee therefor shall be three dollars, except that,
9 in any case where a licensee purchases a Class A and a
10 Class B license at the same time, the fee for a Class B
11 license shall be two dollars and fifty cents. For conveni-
12 ence, the commission may provide for the issuance, in
• 13 those cases where both Class A and Class B licenses are
14 issued to a single licensee at the same time, of both Class

15 A and Class B licenses upon a single form, but, regardless
16 of such form, each shall be and remain a separate license.

Sec. 41. *Class C Courtesy State-wide Hunting and Fishing License.*—A Class C license shall be a courtesy hunting
2 and fishing license and shall entitle the licensee to hunt
3 and fish in all counties of this state. It shall be issued
4 by the director upon application made to him and with-
5 out fee to:
6

7 (1) Members and agents of the United States fish and
8 wildlife service;

9 (2) Members of state commissions of other states ex-
10 tending similar courtesies;

11 (3) Diplomatic and consular representatives of foreign
12 countries; and

13 (4) Persons engaged in scientific research.

14 Not more than one hundred courtesy licenses shall be
15 issued in one year.

Sec. 42. *Class D-1 and Class D-2 Ohio River Hunting and Fishing Licenses.*—A Class D-1 license shall be an
2 Ohio river hunting license and a Class D-2 license shall
3 be an Ohio river fishing license. The licenses shall entitle
4 the licensee to hunt and to fish in the Ohio river only.
5 They shall be issued to citizens of the United States who
6 are residents of the state of Ohio. The fee shall be two
7 dollars for the hunting license and two dollars for the
8 fishing license.
9

Sec. 43. *Class E, Class F and Class G Licenses for Non-residents.*—A Class E license shall be a nonresident hunt-
2 ing license and shall entitle the licensee to hunt all
3 game in all counties of the state. It shall be issued
4 only to citizens of the United States who are not resi-
5 dents of this state. The fee therefor shall be twenty
6 dollars.
7

8 A Class F license shall be a nonresident fishing license
9 and shall entitle the licensee to fish for all fish in all
10 counties of the state. It shall be issued only to citizens of
11 the United States, and to unnaturalized persons possess-
12 ing the permit required by section twenty-eight of this

13 article, who are not residents of this state. The fee there-
14 for shall be ten dollars.

15 A Class G license shall be a nonresident family fishing
16 license and shall entitle the licensee and members of his
17 family to fish within the territorial limits of state parks
18 and state forests and in the waters of streams bounding
19 same, for a distance of not to exceed one hundred yards
20 from the exterior boundary of any state park or state
21 forest, for a period not to exceed one week. It may be
22 issued to any adult nonresident who is temporarily re-
23 siding in any state park or forest as tenant or lessee of
24 the state. The fee therefor shall be three dollars for the
25 head of the family, plus fifty cents additional for each
26 member of his family to whom the privileges of such
27 license are extended. Class G licenses may be issued in
28 such manner and under such regulations as the director
29 may see fit to prescribe.

Sec. 44. *Class H Resident State-wide Beaver Trapping*

2 License.—A Class H license shall be a state-wide beaver
3 trapping license and shall entitle the licensee to trap
4 beaver only in all counties of the state. It shall be issued
5 only to a citizen of the United States who is a bona fide
6 resident of West Virginia. This license shall become valid
7 only when countersigned, in a space provided on face
8 of license, by landowner, lessee, or person who has legal
9 possession of land upon which the trapper is operating.
10 Setting beaver traps upon the lands of another person
11 without obtaining permission and signature in space pro-
12 vided on license shall be considered an illegal act. The
13 licensee shall not be required to hold any other class of
14 license to trap beaver; nor shall said license be required
15 of any bona fide resident landowner or bona fide resident
16 tenant, or a child of either under the age of fifteen years
17 in those cases where they may trap beavers upon lands
18 belonging to such landowner, or in possession of such
19 tenant. The fee therefor shall be two dollars.

Sec. 45. *Class K Nonresident Six-day, State-wide, Fish-*

2 *ing License.*—A Class K license shall be a nonresident
3 fishing license and shall entitle the licensee to fish for all

4 fish in all counties of the state for a period not to exceed
5 six days. It shall be issued only to citizens of the United
6 States, and to unnaturalized persons possessing the per-
7 mit required by section twenty-eight of this article, who
8 are not residents of this state. The fee therefor shall be
9 three dollars.

Sec. 46. *Class L Nonresident State-wide Bow and Arrow
2 Hunting and Fishing License.*—A Class L license shall be
3 a nonresident bow and arrow hunting and fishing license
4 and shall entitle the licensee to employ a long bow and
5 arrow in taking game, fish and frogs in all counties of
6 the state. It shall be issued only to citizens of the United
7 States who are not residents of this state. The fee therefor
8 shall be five dollars.

Sec. 47. *License for Private Game Farm for Propa-
2 gating Animals and Birds for Commercial Purposes.*—The
3 director may issue a license for the operation of a private
4 game preserve for propagation of wild animals and wild
5 birds for commercial purposes. The license shall author-
6 ize the holder to breed or raise animals and birds as
7 specified by the license, to sell the same dead or alive, or
8 to sell the eggs of birds in accordance with regulations
9 prescribed by the director.

10 Application for a license under this section shall desig-
11 nate the property whereon the preserve is to be estab-
12 lished. Before the license is issued, the director shall de-
13 termine that the property is properly enclosed, that the
14 provisions for housing and sanitation are proper and
15 adequate, and that the safety of the public is protected.

16 The annual license fee shall be ten dollars.

Sec. 48. *License for Private Plant or Pond for Propa-
2 gating Fish, Frogs, Turtles and Other Forms of Aquatic
3 Life for Commercial Purposes.*—The director may issue
4 a license for the operation of a private plant, pond or
5 business for the propagation, sale or purchase of fish,
6 frogs, turtles and other forms of aquatic life for com-
7 mercial purposes. The license shall authorize the holder
8 to breed or raise fish, frogs, turtles and other forms of
9 aquatic life as specified by the license and to buy and sell

10 the same dead or alive or the eggs thereof in accordance
11 with regulations prescribed by the director.

12 Application for a license under this section shall design-
13 nate the size, character and location of the plant or pond.
14 Before the license is issued, the director shall determine
15 that the pond or plant will not interfere with the free
16 passage of fish; that any water diverted to such plant or
17 pond does not violate the riparian rights of other land-
18 owners and that such plant, pond or diversion will not
19 interfere with the public stocking or propagation of fish
20 frequenting such waters.

21 A licensee selling fish shall furnish the purchaser with
22 a certificate or invoice of sale, bearing date of sale, the
23 number of the license under which sold, the number of
24 fish and number of pounds sold, and such other informa-
25 tion which the director may require.

26 The certificate or invoice shall be shown by the holder
27 on demand of any person authorized under the provisions
28 of this chapter to enforce the provisions hereof.

29 The annual license fee shall be ten dollars.

Sec. 49. *License for Dealers in Furs.*—The director may
2 issue licenses for buying or dealing in raw furs, pelts or
3 skins of fur-bearing animals as follows:

4 (1) A resident county license, which shall apply only
5 to the county or counties designated on the license and
6 shall be issued only to persons who have been bona fide
7 residents of this state for a period of at least six months
8 prior to the date of application, and of a county in which
9 the privilege is to be exercised. A license shall apply to
10 the county for which issued and to such adjacent counties
11 as are designated in the license. A fee of one dollar for
12 each county shall accompany the application;

13 (2) A resident state-wide license, which shall apply
14 to all counties in the state and shall be issued only to
15 persons who have been bona fide residents of this state
16 for a period of at least six months prior to the date of
17 application. A fee of ten dollars shall accompany the
18 application;

19 (3) A nonresident state-wide license, which shall apply

20 to all counties in the state and shall be issued only to non-
21 residents. A fee of fifty dollars shall accompany the
22 application; and

23 (4) An agent's permit, which shall apply to a person
24 employed by a licensee under subsections (1), (2) or (3)
25 above, to buy or deal as an agent of the licensee other
26 than at the place of business of the licensee. A fee of two
27 dollars and fifty cents for each such agent shall accompany
28 the application.

Sec. 50. *Permit for Scientific or Propagation Purposes.*

2 —The director may issue a permit to a person to hunt,
3 kill, take, capture or maintain in captivity wildlife or
4 reptiles exclusively for scientific or propagation purposes,
5 but not for any commercial purposes. A permit may be
6 issued only upon written application to the director
7 setting forth at least:

8 (1) The number and kind of wildlife or reptiles to be
9 taken;

10 (2) The purpose and manner of taking; and

11 (3) The name, residence and profession of the person
12 applying for the permit.

13 No charge shall be made for this license.

Sec. 51. *Permit for Keeping Pets.*—The director may

2 issue a permit to a person to keep and maintain in cap-
3 tivity as a pet, a wild animal or wild bird that has been
4 acquired from a commercial dealer or during the legal
5 open season. The fee therefor shall be two dollars.

Sec. 52. *Permits for Roadside Menageries.*—The di-

2 rector may issue a permit for the keeping and maintaining
3 in captivity of wild animals, wild birds, amphibians or
4 reptiles as a roadside menagerie. A permit shall not be
5 issued unless:

6 (1) The animals, birds, amphibians or reptiles have
7 been purchased from a licensed commercial dealer, either
8 within or without the state, or have been taken legally; or

9 (2) The director is satisfied that provisions for housing
10 and care of wildlife to be kept in captivity and for the
11 protection of the public are proper and adequate.

12 A fee of twenty-five dollars shall accompany each ap-
13 plication for such permit.

Sec. 53. *License for Privately-owned Commercial Fish-
2 ing Preserve.*—The director may issue a license for the
3 operation of a private pond or privately-owned pond or
4 impoundment to be used as a commercial fishing preserve,
5 provided such impoundments meet the requirements of
6 section twenty-seven of this article: *Provided, however,*
7 *That only one license shall be required where more than*
8 *one private pond or privately-owned pond or impound-*
9 *ment is operated under one ownership and management*
10 *and on one separate commercial fishing preserve. The*
11 *licensee shall have the authority to establish the fishing*
12 *seasons, size and creel limits for such licensed pond or*
13 *impoundment. A person fishing in such lake shall not be*
14 *required to possess the same state-wide fishing license*
15 *as would be required of him if he were fishing in any of*
16 *the public waters of this state.*

17 The annual fee for the commercial fishing preserve
18 license shall be twenty-five dollars.

Sec. 54. *License for Privately-owned Commercial
2 Shooting Preserves.*—1. The director may issue a license
3 for privately-owned commercial shooting preserves to any
4 person who meets the following requirements:

5 (a) Each commercial shooting preserve shall contain
6 a minimum of three hundred acres in one tract of leased
7 or owned land (including water area, if any) and shall
8 be restricted to no more than three thousand contiguous
9 acres (including water area, if any), except that preserves
10 confined to the releasing of ducks only shall be author-
11 ized to operate with a minimum of fifty contiguous acres
12 (including water area); and

13 (b) The exterior boundaries of each commercial shoot-
14 ing preserve shall be clearly defined and posted with signs
15 erected around the extremity at intervals of one hundred
16 fifty yards or less.

17 2. The director shall designate the game which may be
18 hunted under this section on which a more liberal season
19 may be allowed.

20 3. The operating licenses or permits issued by the di-
21 rector shall entitle holders thereof, and their guests or
22 customers, to recover not more than eighty per cent of the
23 total number of each species of game bird released on the
24 premises each year, except mallard, black duck, ring-
25 necked pheasant, chukar partridge, and other nonnative
26 game species upon which a one hundred per cent recovery
27 may be allowed.

28 4. Except for the required compliance with the restric-
29 tion on the maximum number of released birds that may
30 be recovered from each preserve each year, as provided
31 in subsections three and eight, shooting preserve opera-
32 tors may establish their own shooting limitations and
33 restrictions on the age, sex and number of birds that may
34 be taken by each person.

35 5. In order to give a reasonable opportunity for a fair
36 return on a sizeable investment, a liberal season shall be
37 designated by the director during the six-month period,
38 beginning October first and ending March thirty-first.

39 6. All harvested game shall be tagged prior to being
40 either consumed on the premises or removed therefrom,
41 such tags to remain affixed until the game actually is
42 delivered to the point of consumption. The director shall
43 furnish numbered tags at nominal cost to shooting pre-
44 serve operators.

45 7. Each shooting preserve operator shall maintain a
46 registration book listing all names, addresses, and hunting
47 license numbers of all shooters; the date on which they
48 hunted; the amount of game and the species taken; and
49 the tag numbers affixed to each carcass. An accurate
50 record likewise must be maintained of the total number,
51 by species, of game birds and ducks raised and/or pur-
52 chased, and the date and number of all species released.
53 These records shall be open to inspection by a delegated
54 representative of the director at any reasonable time, and
55 shall be the basis upon which the game recovery limits
56 in subsection three hereof shall be determined.

57 8. Any wild game found on commercial shooting pre-
58 serves may be harvested in accordance with applicable
59 game and hunting laws pertaining to open seasons, bag

60 and possession limits, and so forth, as are established
61 regularly by the director and the United States fish and
62 wildlife service.

63 9. State hunting licenses shall be required of all persons
64 hunting or shooting on shooting preserves.

65 10. The fee for such licenses shall be fifty dollars per
66 year for the first three hundred acres of shooting preserve
67 area, plus twenty-five dollars per year for each additional
68 three hundred acres or part thereof.

Sec. 55. *License to Catch and Sell Minnows or Other
2 Bait Fish; Fee; Duration; Renewal.*—The director shall
3 have the power and authority to issue a license to any
4 person to catch and sell minnows or other bait fish upon
5 written application therefor, signed by the applicant. The
6 fee for such license shall be ten dollars. All licenses issued
7 under this section shall expire on the first day of January
8 following the date of issue. Any such license may be
9 renewed from year to year upon paying to the director
10 the sum of one dollar for each such renewal.

Article 3. Forests and Wildlife Areas.

Section

1. Division of forestry; duties and functions.
2. Acquisition of suitable lands by director; maintenance thereof as state forests or wildlife areas.
3. Establishment of wildlife areas; leasing lands therefor.
4. Forest fires; authority and duties of director and others; expenditures for forest fire control.
5. Forest fire seasons; permits; prohibited fires; closure of forests.
6. Failure of person to extinguish fire started or used by him; throwing lighted material on forest land.
7. Starting fire on lands of another; felony.
8. Duty of railroad company to protect against fires.
9. Right of railroad company to clear land adjacent to right of way.
10. Engines; escape of fire from.
11. Recovery of expenses incurred in fighting fires.
12. Timber land and forest land defined.
13. Director authorized to secure federal cooperation; annual appropriation.
14. Financial assistance from owners of forest lands; expenditures by director.
15. Owner not relieved from civil liability for damage from fire.
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17. Disposition of proceeds of national forests.
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19. Protection of forests against destructive insects and diseases; purposes and intent of the section.
20. Southeastern interstate forest fire protection compact; governor's authority to execute.
21. When and how compact becomes operative.

- 22. Compact administration; committee; terms and removal.
- 23. Compact committee powers and duties; cooperation therewith.
- 24. Other powers supplementary.

Section 1. *Division of Forestry; Duties and Functions.*

2 —The division of forestry, herein created and established,
3 shall have within its jurisdiction and supervision the
4 state forests, other forest and woodland areas, the protec-
5 tion of forest areas from injury and damage by fire,
6 disease, insects and other pestilences and forces, adminis-
7 tration of the southeastern interstate forest fire protec-
8 tion compact and other compacts and agreements relating
9 to forestry area management and husbandry, and the
10 administration and enforcement of all laws relating to
11 the conservation, development, protection, use and enjoy-
12 ment of all forest land areas of the state consistent with
13 the provisions of this chapter.

14 The chief of the division shall be designated state
15 forester and shall be responsible for the execution and
16 administration of the provisions of this article as an in-
17 tegral part of the natural resources program of the state.
18 In addition to merit system qualifications and require-
19 ments, the state forester shall be a graduate of an ac-
20 credited school of forestry with practical experience and
21 training in forestry field organization and programs.

22 The division chief shall study means and methods of
23 implementing the provisions of section fifty-three, article
24 six of the constitution of West Virginia, relating to forest
25 lands, and shall prepare and recommend to the director
26 legislation thereon.

PART I. FORESTS AND WILDLIFE AREAS

Sec. 2. *Acquisition of Suitable Lands by Director;
2 Maintenance Thereof as State Forests or Wildlife Areas.—*
3 The director may with the consent of the governor pur-
4 chase, in the name of the state, out of funds set aside for
5 the purpose, or out of any unused funds in his hands, lands
6 suitable for forest culture, state forests, or wildlife
7 refuges. Such funds may also be used for the construction
8 of dams for fish refuges on lands so acquired. Purchase
9 may be made on terms requiring not less than one third
10 of the purchase price to be paid at the time of the con-

veyance with the residue to be paid in not less than one or two years after date. Without the consent of the governor, not more than twenty-five dollars per acre shall be paid for lands to be used for the purpose of this article. The director may also receive the gift of such lands by deed or bequest. In all cases of transfers to the state, the fee simple title shall pass to the state, except minerals and mining rights to remove such minerals may be excepted or reserved.

The director shall protect, preserve and maintain lands so acquired as state forests and wildlife areas for the propagation and distribution of forest trees and for the protection, management, propagation and distribution of the fish, wild animals and birds thereon. He may prescribe and enforce rules and regulations consistent with the laws of the state to carry out that objective. The director may prescribe and enforce rules prohibiting all fishing and hunting, pursuing, catching, trapping, capturing and killing of fish, wild animals and birds upon such state forests and wildlife areas for such length of time as he may deem proper.

The director may provide special regulations and open seasons for the taking of any wild birds, wild animals or fish on such lands in the manner provided in this chapter.

Sec. 3. *Establishment of Wildlife Areas; Leasing Lands*

Therefor.—The director shall establish and maintain wildlife areas on lands purchased, leased or given for this purpose. Upon such state-owned or leased lands under its administration, or lands purchased from departmental funds for the establishment of wildlife areas, or upon lands purchased in cooperation with any agency of the federal government or leased therefrom or managed cooperatively therewith, the director shall regulate public hunting, chasing for sport, shooting, and limit the number of wildlife, which may be taken from such areas open to public shooting in any year. The director may establish special open seasons on any such lands, and may close any such areas, or parts thereof, to public shooting.

It shall be unlawful at any time to hunt, pursue or molest in any manner, any animals, birds or fowls on that

17 section of any wildlife area designated as wildlife refuge,
18 except that any legally constituted enforcement officer,
19 or other person designated by the director, may hunt,
20 pursue, catch and kill in any manner predatory animals
21 and predatory birds thereon.

22 On the boundary of each state wildlife refuge, there
23 shall be posted in conspicuous places, not more than one
24 hundred and fifty yards apart, notices bearing the follow-
25 ing words: "State wildlife refuge—hunting is unlawful",
26 and such other information or rules and regulations as
27 the director may deem advisable. On the boundary line
28 of any such wildlife area which has been established as a
29 public shooting ground, the director shall have posted in
30 conspicuous places, not more than one hundred and fifty
31 yards apart, notices bearing the following words: "Public
32 shooting grounds", together with information as to when
33 hunting is legal on such tract.

34 The director shall also have the power to lease lands for
35 this purpose for not less than ten-year periods, the rental
36 price thereof not to be more than the amount of the an-
37 nual property taxes on such land, and in no event to
38 exceed ten cents per acre per annum.

39 The director may, with the consent of the owner, set
40 apart any tract of land in the state as a wildlife area.
41 When such lands have been set apart, the director shall
42 manage them in the same manner and for the same pur-
43 pose as wildlife areas owned by the state. Such lands not
44 owned by the state and now operated by the director as
45 wildlife areas shall, at the expiration of the agreement,
46 be reorganized as wildlife areas or be discontinued.

2 *Sec. 4. Forest Fires; Authority and Duties of Director*
3 *and Others; Expenditures for Forest Fire Control.*—Upon
4 receiving notice of any fire which is injuring or endanger-
5 ing forest land within the state, the director, or his duly
6 authorized representative, the state forester, or any con-
7 servation officer shall employ all necessary means to con-
8 fine, extinguish or suppress the fire. For these purposes
9 such persons and their employees shall, under the general
10 supervision of the director, have the right and authority to
enter upon public or private lands, to destroy fences

11 thereon, to plow such lands, and in case of extreme emer-
12 gency, to set backfires thereon. The state forester and any
13 conservation officer may, under the general supervision
14 of the director, or his duly authorized representative,
15 employ persons to detect fires which may injure or
16 endanger forest land, and may likewise summon or em-
17 ploy persons to assist in extinguishing such fires, who shall
18 be paid for the actual time so employed, at a rate per
19 hour to be determined by the director: *Provided, however,*
20 *That the rate per hour shall not exceed the rate per hour*
21 *paid for any comparable labor or skills by the state road*
22 *commission. Any person so summoned who shall fail or*
23 *refuse to assist in extinguishing any such fire shall, unless*
24 *such failure or refusal to assist is due to physical inability,*
25 *be guilty of a misdemeanor.*

26 Expenditures for detecting, confining, extinguishing or
27 suppressing fires described in this section shall be charged
28 against the state and shall be paid out of the sum of one
29 hundred twenty thousand dollars annually appropriated
30 and made available under provisions of section thirteen of
31 this article. The state forester or his agent shall render to
32 the director, as soon as practicable, a sworn statement
33 with the names of all persons who were summoned or em-
34 ployed and assisted in fighting such fires, the time so
35 spent by each, as well as the names of persons who
36 furnished equipment, subsistence or supplies, or trans-
37 portation therefor, and the amount of money due each for
38 such services, subsistence, supplies or transportation.
39 Requisitions shall be issued and payment of the sums due
40 shall be made in the same manner as is provided for the
41 making of other expenditures by the director.

Sec. 5. *Forest Fire Seasons; Permits; Prohibited Fires;*
2 *Closure of Forests.*—The periods of each year between
3 March first and May thirty-first, inclusive, and October
4 first and December thirty-first, inclusive, are hereby des-
5 ignated as forest fire seasons. No person shall during any
6 such fire season, except between the hours of five o'clock
7 p. m. eastern standard time and five o'clock a. m. eastern
8 standard time, set on fire or cause to be set on fire any
9 forest land, or any grass, grain, stubble, slash, debris, or

10 other inflammable material if it is located in a place from
11 which it is reasonable to expect that the fire may spread to
12 any forest land. Any person who sets or causes to be set
13 such a fire during any period of time permitted by this
14 section shall not leave the fire unattended and shall com-
15 pletely extinguish the fire before five o'clock a. m. eastern
16 standard time. If damage to the property of another re-
17 sults from any such fire during a forest fire season, it shall
18 be prima-facie evidence that the person who set such fire
19 or caused it to be set violated the provisions of this para-
20 graph.

21 The director or his designated appointees or employees
22 may issue permits authorizing fires prohibited by the pre-
23 ceding paragraph. Such permits may be granted on such
24 conditions and for such periods of time as the director
25 deems necessary to prevent danger from fire to life or
26 property, and noncompliance with any term of the permit
27 shall be a violation of this section. Any permit which was
28 obtained through wilful misrepresentation shall be in-
29 valid. All permit holders shall take all necessary and
30 adequate precautions to confine and control any fire
31 permitted by the authorization; failure to take such action
32 shall be a violation of this section and shall be justifica-
33 tion for the director's obtaining a court order requiring
34 the permit holder to extinguish and cease using fires dur-
35 ing the forest fire season.

36 When the director considers it necessary to prevent
37 danger from fire to life or property, he may, with the prior
38 approval of the governor, prohibit the starting of and re-
39 quire the extinguishment of any fire in any forest area
40 designated by the director, and such action may include
41 any fire for which a permit has been issued under the pre-
42 ceding paragraph. In addition, if so deemed necessary,
43 the director may, with the prior approval of the governor,
44 designate any forest area as a danger area and prohibit
45 entry thereon or use thereof except for the purposes and
46 on the conditions he designates. The director by procla-
47 mation shall establish such areas and designate which
48 fires are prohibited therein; and if a danger area is estab-
49 lished, he shall announce the purposes for which and con-
50 ditions under which entry thereon or use thereof may be

51 made. Action hereunder may be taken by the director at
52 any time during the year. Notice of any proclamation
53 hereunder shall be posted on each primary road at the en-
54 trance to the designated areas and copies of the procla-
55 mation shall be furnished at the time of posting to news-
56 papers, radio stations and television stations which serve
57 the area designated. The proclamation shall not be ef-
58 fective until twenty-four hours after it is posted as here-
59 in provided. Any proclamation hereunder shall remain in
60 force until the director, with the approval of the governor,
61 by order terminates it. The order shall designate the time
62 of termination, and notice of any such order shall be fur-
63 nished to each newspaper, radio station and television
64 station which received a copy of the proclamation. The
65 posted notices shall be removed as soon as possible after
66 termination of any such proclamation. Any person who
67 starts or fails to extinguish a fire so prohibited or enters or
68 uses a danger area otherwise than permitted shall be
69 guilty of a violation of this section.

2 *Sec. 6. Failure of Person to Extinguish Fire Started or
3 Used by Him; Throwing Lighted Material on Forest Land.*

4 —Any person who, by himself, or by his servants, agents
5 or guides, or as a servant, agent or guide of any other per-
6 son, shall at any time build or use any fire in any field, in
7 any public or private road, or in any area adjacent to or
8 in any forest land in this state, shall, before leaving such
9 fire for any period of time, totally extinguish the same.

10 A person shall not at any time throw or place any light-
11 ed match, cigar, cigarette, firecracker or other lighted ma-
12 terial on any forest land, private road, public highway or
13 railroad right of way within this state.

14 Any person who violates any provision of this section
15 shall be guilty of a misdemeanor.

2 *Sec. 7. Starting Fire on Lands of Another; Felony.—*

3 Any person who wilfully sets or causes to be set on fire
4 any forest land, grass, grain, stubble, brush, slash, debris,
5 or any other inflammable substance upon the property of
6 another without his consent, or in a place from which it is
7 reasonable to expect that the fire may spread to the prop-
8 erty of another without his consent, and as a result of

8 either causes damage or destruction to any natural re-
9 sources in or on the other person's property, shall be
10 guilty of a felony, and, upon conviction thereof, shall be
11 fined not less than one hundred dollars nor more than five
12 hundred dollars, or be imprisoned for not less than one
13 year nor more than five years, or both, in the discretion
14 of the court.

Sec. 8. *Duty of Railroad Company to Protect against*
2 *Fires.*—Every railroad company or other company op-
3 erating a steam, diesel or other type of locomotive shall
4 cut and remove from the part of its road or right of way
5 which passes through forest land or lands subject to fire
6 from any cause, at least once a year, all grass, brush, and
7 other inflammable materials, and employ, at times when
8 such land is in a dry and dangerous fire condition, suffi-
9 cient trackmen to promptly put out fires on such road or
10 right of way; and shall provide locomotives thereon with
11 netting of steel or iron so constructed as to give the best
12 practical protection against the escape of fire and sparks
13 from the smokestacks or exhausts thereof and against the
14 escape of fire from ash pans and furnaces which are used
15 on such locomotives.

16 No such company, or any employee thereof, shall de-
17 posit, cast, or discharge fire coals or ashes on that part of
18 its road or right of way which passes through forest land,
19 or lands subject to fire from any cause, unless the fire
20 therein is immediately extinguished. No such company,
21 or employee thereof, shall place a lighted fusee along such
22 roads or rights of way in such a manner as will cause the
23 same to ignite inflammable substances which may cause
24 fire to spread to forest land. In case of any uncontrolled
25 or unguarded fire on such part of its road or right of way,
26 the company shall use all practicable means to extinguish
27 it. Engineers, conductors, trainmen, or other persons who,
28 while working for such companies, discover or know of
29 any fire on, along or near such part of the road or right of
30 way of their employer, shall report the same as soon as
31 possible to personnel of the director. A company, or any
32 officer or employee thereof, violating any provision of this
33 section, shall be guilty of a misdemeanor.

Sec. 9. *Right of Railroad Company to Clear Land Adjacent to Right of Way.*—For the purpose of providing increased protection to forest land from fire originating along railroads, any company which operates a railroad shall have the right, subject to the provisions of this section, without liability for trespass, to enter upon forest land for a distance of one hundred feet from its road or right of way and to clear from such a strip any inflammable material such as leaves, grass, dead trees, slash and brush, but shall not remove any valuable timber growth or other thing of value without consent of and recompense to the owner. Not less than fifteen days prior to clearing such lands, the railroad company shall give the owner thereof notice of its intention, together with a transcript of this section, by letter deposited in the United States mail to his last known address. If the owner shall not file an objection to such clearing with the director within ten days of the date of said notice, he shall be deemed to have given consent. Upon the filing by an owner of such objection showing cause why such clearing should not be done, the director shall review the case and may sustain the objection of the owner or permit the clearing in whole or in part.

Sec. 10. *Engines; Escape of Fire from.*—No person, firm or corporation shall use or operate in forest land, or within one eighth of a mile therefrom, a sawmill, a power shovel, or an engine or machine capable of throwing sparks, unless the equipment is provided with an adequate spark arrester. Escape of fire from such equipment shall be prima-facie evidence that such appliance was not maintained properly in compliance with this section. Any person, firm or corporation violating this section shall be guilty of a misdemeanor.

Sec. 11. *Recovery of Expenses Incurred in Fighting Fires.*—The director shall, in the name of the state, recover from the persons, firms or corporations whose negligence or whose violation of any provision of this article caused any fire at any time on grass or forest land, the amount expended by the state in confining, extinguishing or suppressing such fire and the costs thereof. Such re-

8 covery shall not bar an action for damages by any other
9 person.

10 Any such fire which was caused by a trespasser or by a
11 person who was upon the property without the consent of
12 the owner shall not be deemed caused by the negligence
13 of the owner; but the owner shall use all practical means
14 to confine, extinguish or suppress any such fire on his
15 land even though it was caused by any such person. If
16 he fails to do so, after becoming aware of such fire, the di-
17 rector shall, in the name of the state, recover from him
18 amounts expended by the state for such purposes and the
19 costs thereof.

Sec. 12. *Timber Land and Forest Land Defined.*—For
2 the purpose of this chapter, any land shall be considered
3 timber land or forest land which has enough timber stand-
4 ing or down to constitute, in the judgment of the com-
5 mission, a fire menace to itself or adjoining lands: *Pro-*
6 *vided, however,* That nothing in this section contained
7 shall be construed to include lands under cultivation or
8 in grass: *Provided further,* That nothing contained herein
9 shall be construed so as to include within the provisions
10 of this section any land which is an isolated fire risk, un-
11 less a forest fire thereon would imperil the lands of any
12 adjoining landowner or landowners.

Sec. 13. *Director Authorized to Secure Federal Coop-*
2 *eration; Annual Appropriation.*—The director may do all
3 things required to meet the conditions and requirements
4 of the federal government in securing federal cooperation
5 under the provisions of the Weeks Law and the Clarke-
6 McNary Law, and any other law amendatory thereof or
7 supplemental thereto, for the purpose of the prevention
8 and control of forest fires and the advancement of forestry
9 practices. The sum of one hundred twenty thousand
10 dollars is hereby appropriated annually, and the board of
11 public works shall include said sum of one hundred twenty
12 thousand dollars for said purpose in its annual budget to
13 the Legislature as provided in section fifty-one, article
14 six of the constitution of this state and/or in such other
15 budgets as it may present to the Legislature as may be
16 necessary to provide the said sum of one hundred twenty

17 thousand dollars for the purpose of this section, which
18 sum of one hundred twenty thousand dollars annually
19 shall be paid into the state treasury to the credit of the
20 department of natural resources and be expended and
21 drawn upon by it for the aforesaid purposes, in the
22 manner herein elsewhere provided. Any unexpended
23 balance of this appropriation at the end of any fiscal year
24 shall be reappropriated and retained for forest fire con-
25 trol expenditures: *Provided, however,* That all such bal-
26 ances revert to the general fund.

Sec. 14. *Financial Assistance from Owners of Forest
2 Lands; Expenditures by Director.*—The director may co-
3 operate with the owners of forest lands and receive finan-
4 cial assistance from them for forestry purposes and do
5 any and all things necessary therefor, including the es-
6 tablishment and maintenance of patrol and lookout sta-
7 tions: *Provided, however,* That the director shall expend
8 for forestry purposes, and for no other purpose, such
9 moneys as shall be appropriated therefor by the state, and
10 such moneys as may be recovered from persons giving
11 origin to grass or forest fires, and such moneys as may be
12 received from the federal government by appropriation
13 under the Weeks and Clarke-McNary laws, or otherwise.

Sec. 15. *Owner Not Relieved from Civil Liability for
2 Damage from Fire.*—Nothing in this chapter shall be con-
3 strued to relieve the owner, lessee or user of any land from
4 civil liability for damage resulting from any fire for which
5 their agents or employees may be responsible.

Sec. 16. *Prima-Facie Evidence of Negligence.*—In all
2 criminal and civil actions for any injury occasioned by fire
3 communicated by burning or clearing land, the fact that
4 such fire was so communicated shall be prima-facie evi-
5 dence of negligence on the part of the person or agent or
6 employee or any other person who shall at the time of
7 such injury by fire be in the use and occupation of the
8 land on which the burning was done and of those who
9 shall at such time have care and management of such
10 burning.

Sec. 17. *Disposition of Proceeds of National Forests.*—
2 Receipts from any national forest, paid to the state or its

3 proper officers pursuant to directions of acts of Congress,
4 shall be allocated by the auditor to each county which has
5 acreage located in such national forest, in the proportion
6 which the acreage in such county bears to the total acre-
7 age of such national forest in this state. Eighty per cent
8 of the funds so allocated to any county shall be paid to
9 the board of education of the county to be expended by
10 the board for the benefit of the public schools of the coun-
11 ty. Twenty per cent of the funds so allocated to any
12 county shall be paid to the state road commission to be ex-
13 pended for secondary road purposes in that county.

14 Notwithstanding any contrary provision of former law,
15 any sheriff or county court of any county having charge
16 or custody of any unexpended national forest proceeds,
17 received under allocations made pursuant to former pro-
18 visions of law, shall pay over eighty per cent of such un-
19 expended balance to the county board of education, and
20 twenty per cent thereof to the state road commission, for
21 expenditure as provided herein.

Sec. 18. *Disposition of Flood Control, Navigation and*
2 *Allied Funds from the Federal Government.*—Receipts
3 from the treasurer of the United States, paid to the state
4 or its proper officers pursuant to direction of an act of
5 Congress relating to disposition of funds received on ac-
6 count of the leasing of lands for flood control, navigation
7 and allied purposes, shall be allocated by the state auditor
8 to each county in accordance with the method of allocation
9 specified by the federal government. The state auditor
10 shall transfer to the road commission fifty per cent of the
11 funds so allocated to each county for the purpose of main-
12 tenance of secondary roads in the area or areas of the
13 county in which such flooded lands are located. Fifty per
14 cent of the funds so allocated to any county in which such
15 lands are located shall be paid by the state auditor to the
16 board of education of that county to be expended by the
17 board for the benefit of the public schools of the county.

Sec. 19. *Protection of Forests against Destructive In-*
2 *sects and Diseases; Purposes and Intent of the Section.*—
3 In order to protect and preserve forest resources of the
4 state of West Virginia from ravages of bark beetles, de-

5 foliators, rusts, blights, wilts and other destructive forest
6 pests and diseases, and thereby enhance the growth and
7 maintenance of forests; promote the stability of forest-
8 using industries and employment associated therewith;
9 reduce the fire risk created by dying and dead trees in-
10 jured or killed by insects or diseases; conserve forest cover
11 on watersheds and protect recreational and other forest
12 values, it shall be the policy of the state of West Virginia,
13 independently and through cooperation with adjoining
14 states, the federal government, and private timber owners
15 and other private organizations, to prevent, retard, con-
16 trol, suppress, or eradicate incipient, potential or emerg-
17 ency outbreaks of destructive insects and diseases on, or
18 threatening, all forest land irrespective of ownership.

19 (a) Authority. The director is authorized either di-
20 rectly or in cooperation with other agencies, subject to
21 such conditions as he may deem necessary and using such
22 funds as have been, or may hereafter be made available
23 for those purposes, to conduct surveys on any forest land
24 to detect and appraise infestations of forest insect pests
25 and tree diseases, to determine the measures which should
26 be applied on such lands, in order to prevent, retard, con-
27 trol, suppress or eradicate incipient, threatening, poten-
28 tial or emergency outbreaks of such insect or disease pests,
29 and to plan, organize, direct and carry out such meas-
30 ures as he may deem necessary to accomplish the objec-
31 tives and provisions of this section: *Provided*, That actual
32 control measures shall be conducted with the coopera-
33 tion and consent of the quarantine and regulatory official
34 of the department of agriculture.

35 (b) Establishing Control Zone; Notice to Landowners.
36 Where an insect infestation or disease infection is be-
37 lieved to exist on a forest land within this state, the di-
38 rector shall investigate the condition. Whenever he finds
39 that an infestation or infection exists, he shall request the
40 quarantine officials of the state department of agriculture
41 to declare the same a public nuisance. When same has
42 been declared a public nuisance he shall establish a con-
43 trol zone of the forest land wherein the same is found, and
44 shall give notice in writing by at least two publications
45 in a newspaper of general circulation in the area or areas

46 where the control zone is established, by mail or otherwise
47 to forest landowners within the control zone, advising
48 them of the nature of the infestation or infection, recom-
49 mending control measures and offering technical advice
50 on methods of carrying out the control measures.

51 (c) Institution of Control Measures. If, after notifica-
52 tion by the director, any landowner fails, neglects, or is
53 unable to carry out the control measures recommended by
54 the director as set forth in subsection (b), the director
55 may, through his agents, institute and carry out such con-
56 trol measures.

57 (d) Appeals. Any person damaged or aggrieved by
58 any action of any officer or employee of the department
59 under the provisions of this section shall have the right
60 to appeal from such action to the director and then to the
61 circuit court of the county in which such person resides
62 in which he owns forest land affected by such action. The
63 court, after hearing the evidence in the case, may make
64 such orders as may be appropriate to protect the interests
65 of the appellant, adjacent forest landowners, or the state.

66 (e) Cooperation with Individuals and Public Agencies.
67 The director is authorized to cooperate with landowners
68 and appropriate authorities of town, city, county, adjoin-
69 ing state and the United States government, and other
70 agencies having jurisdiction of state lands, concerning
71 forest tree insect and disease investigation and control,
72 and to accept money, gifts and donations, and to disburse
73 the same for the purpose of carrying out the provisions of
74 this section.

75 (f) Annual Appropriation; Forest Pest Control Fund.
76 There is hereby created in the state treasury a special
77 fund to be known as the forest pest control fund. Such
78 fund shall consist of all moneys appropriated thereto by
79 the Legislature and all moneys received and deposited
80 with the state treasurer under the provisions of this sec-
81 tion. All such funds are hereby appropriated to the de-
82 partment of natural resources to be used to carry out the
83 purpose of this section.

84 (g) Definitions. As used in this section, unless the con-
85 text clearly requires otherwise:

- 86 (1) "Forest trees" mean only those trees which are a
87 part of and constitute a stand of potential, immature or
88 mature commercial timber trees: *Provided*, That the term
89 "forest trees" shall be deemed to include shade trees of
90 any species around houses, along highways and within
91 cities and towns if the same constitute an insect or disease
92 menace to nearby timber trees or timber stands;
- 93 (2) "Forest land" means land on which forest trees
94 occur;
- 95 (3) "Control zone" means an area of potential or actual
96 infestation or infection, the boundaries of which are fixed
97 and clearly described in a manner to definitely identify
98 the zone;
- 99 (4) "Infestation" means infestation by means of any
100 insect in any stage of growth which is determined to be
101 dangerously injurious to forest trees; and
- 102 (5) "Infection" means infection by any disease affecting
103 forest trees which is determined to be dangerously injuri-
104 ous thereto.

PART II. SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

Sec. 20. *Southeastern Interstate Forest Fire Protection*
2 Compact; *Governor's Authority to Execute*.—The gov-
3 ernor of West Virginia, on behalf of this state, is hereby
4 authorized to execute a compact in substantially the fol-
5 lowing form, with any one or more of the states of Ala-
6 bama, Florida, Georgia, Kentucky, Mississippi, North
7 Carolina, South Carolina, Tennessee and Virginia, and
8 the Legislature hereby signifies in advance its approval
9 and ratification of such compact:

10 SOUTHEASTERN INTERSTATE FOREST FIRE 11 PROTECTION COMPACT

12 Article I.

13 The purpose of this compact is to promote effective pre-
14 vention and control of forest fires in the southeastern
15 region of the United States by the development of inte-
16 grated forest fire plans, by the maintenance of adequate
17 forest fire-fighting services by the member states, by pro-

18 viding for mutual aid in fighting forest fires among the
19 compacting states of the region and with states which
20 are party to other regional forest fire protection compacts
21 or agreements, and for more adequate forest protection.

22 Article II.

23 This compact shall become operative immediately as
24 to those states ratifying it whenever any two or more
25 of the states of Alabama, Florida, Georgia, Kentucky,
26 Mississippi, North Carolina, South Carolina, Tennessee,
27 Virginia and West Virginia, which are contiguous, have
28 ratified it and Congress has given consent thereto. Any
29 state not mentioned in this article which is contiguous
30 with any member state may become a party to this com-
31 pact subject to approval by the Legislature of each of the
32 member states.

33 Article III.

34 In each state, the state forester or officer holding the
35 equivalent position who is responsible for forest fire con-
36 trol shall act as compact administrator for that state and
37 shall consult with like officials of the other member
38 states, and shall implement cooperation between such
39 states in forest fire prevention and control.

40 The compact administrators of the member states shall
41 coordinate the services of the member states and provide
42 administrative integration in carrying out the purposes
43 of this compact.

44 There shall be established an advisory committee of
45 legislators, forestry commission representatives, and for-
46 estry or forest products industries representatives, which
47 shall meet from time to time with the compact admin-
48 istrators. Each member state shall name one member
49 of the senate and one member of the house of delegates
50 who shall be designated by that state's commission on
51 interstate cooperation, or if said commission cannot con-
52 stitutionally designate the said members, they shall be
53 designated in accordance with laws of that state; and
54 the governor of each member state shall appoint two
55 representatives, one of whom shall be associated with
56 forestry or forest products industries, to comprise the

57 membership of the advisory committee. Action shall be
58 taken by a majority of the compacting states and each
59 state shall be entitled to one vote.

60 The compact administrators shall formulate and, in
61 accordance with need, from time to time, revise a regional
62 forest fire plan for the member states.

63 It shall be the duty of each member state to formulate
64 and put into effect a forest fire plan for that state and take
65 such measures as may be necessary to integrate such
66 forest fire plan with the regional forest fire plan formu-
67 lated by the compact administrators.

68 Article IV.

69 Whenever the state forest fire control agency of a
70 member state requests aid from the state forest fire con-
71 trol agency of any other member state in combatting,
72 controlling or preventing forest fires, it shall be the duty
73 of the state forest fire control agency of that state to
74 render all possible aid to the requesting agency which is
75 consonant with the maintenance of protection at home.

76 Article V.

77 Whenever the forces of any member state are rendering
78 outside aid pursuant to the request of another member
79 state under this compact, the employees of such state
80 shall, under the direction of the officers of the state to
81 which they are rendering aid, have the same powers
82 (except the power of arrest), duties, rights, privileges
83 and immunities as comparable employees of the state to
84 which they are rendering aid.

85 No member state or its officers or employees rendering
86 outside aid pursuant to this compact shall be liable on
87 account of any act or omission on the part of such forces
88 while so engaged, or on account of the maintenance or
89 use of any equipment or supplies in connection therewith:
90 *Provided*, That nothing herein shall be construed as re-
91 lieving any person from liability for his own negligent act
92 or omission, or as imposing liability for such negligent
93 act or omission upon any state.

94 All liability, except as otherwise provided hereinafter,
95 that may arise either under the laws of the requesting

96 state or under the laws of a third state on account of or
97 in connection with a request for aid, shall be assumed
98 and borne by the requesting state.

99 Any member state rendering outside aid pursuant to
100 this compact shall be reimbursed by the member state
101 receiving such aid for any loss or damage to, or expense
102 incurred in the operation of, any equipment answering
103 a request for aid, and for the cost of all materials, trans-
104 portation, wages, salaries, subsistence of employees
105 and maintenance of equipment incurred in connection
106 with such request: *Provided*, That nothing herein con-
107 tained shall prevent any assisting member state from
108 assuming such loss, damage, expense or other cost or from
109 loaning such equipment or from donating such service to
110 the receiving member state without charge or cost.

111 Each member state shall provide for the payment of
112 compensation and death benefits to injured employees and
113 the representatives of deceased employees in case em-
114 ployees sustain injuries or are killed while rendering
115 outside aid pursuant to this compact, in the same manner
116 and on the same terms as if the injury or death were
117 sustained within such state.

118 For the purposes of this compact, the term "employee"
119 shall include any volunteer or auxiliary legally included
120 within the forest fire fighting forces of the aiding state
121 under the laws thereof.

122 The compact administrators shall formulate procedures
123 for claims and reimbursement under the provisions of
124 this article, in accordance with the laws of the member
125 states.

126 Article VI.

127 Ratification of this compact shall not be construed to
128 affect any existing statute so as to authorize or permit
129 curtailment or diminution of the forest fire fighting forces,
130 equipment, services or facilities of any member state.

131 Nothing in this compact shall be construed to limit or
132 restrict the powers of any state ratifying the same to
133 provide for the prevention, control and extinguishment of
134 forest fires, or to prohibit the enactment or enforcement

135 of state laws, rules or regulations intended to aid in such
136 prevention, control and extinguishment in such state.

137 Nothing in this compact shall be construed to affect
138 any existing or future cooperative relationship or arrange-
139 ment between any federal agency and a member state or
140 states.

141

Article VII.

142 The compact administrators may request the United
143 States forest service to act as a research and coordinating
144 agency of the southeastern interstate forest fire protection
145 compact in cooperation with the appropriate agencies in
146 each state, and the United States forest service may accept
147 responsibility for preparing and presenting to the com-
148 pact administrators its recommendations with respect
149 to the regional fire plan. Representatives of any federal
150 agency engaged in forest fire prevention and control may
151 attend meetings of the compact administrators.

152

Article VIII.

153 The provisions of articles four and five of this compact
154 which relate to mutual aid in combatting, controlling or
155 preventing forest fires shall be operative as between any
156 state party to this compact and any other state which is
157 party to a regional forest fire protection compact in an-
158 other region: *Provided*, That the Legislature of such other
159 state shall have given its assent to such mutual aid pro-
160 visions of this compact.

161

Article IX.

162 This compact shall continue in force and remain bind-
163 ing on each state ratifying it until the Legislature or the
164 governor of such state, as the laws of such state shall
165 provide, takes action to withdraw therefrom. Such action
166 shall not be effective until six months after notice thereof
167 has been sent by the chief executive of the state desiring
168 to withdraw to the chief executives of all states then
169 parties to the compact.

Sec. 21. *When and How Compact Becomes Operative.*—

2 When the governor shall have executed said compact on
3 behalf of this state and shall have caused a verified copy

4 thereof to be filed with the secretary of state and when
5 said compact shall have been ratified by one or more of
6 the states named in section nineteen of this article, then
7 said compact shall become operative and effective as
8 between this state and such other state or states. The
9 governor is hereby authorized and directed to take such
10 action as may be necessary to complete the exchange of
11 official documents as between this state and any other
12 state ratifying said compact.

Sec. 22. *Compact Administration; Committee; Terms
2 and Removal.*—In pursuance of article three of said com-
3 pact, the director of the department of natural resources
4 of the state of West Virginia or his designated representa-
5 tive shall act as compact administrator for the state of
6 West Virginia of the southeastern interstate forest fire
7 protection compact during his term of office as director,
8 and his successor as compact administrator shall be his
9 successor as director. As compact administrator he shall
10 be an ex officio member of the advisory committee of the
11 southeastern interstate forest fire protection compact, and
12 chairman ex officio of the West Virginia members of said
13 advisory committee. There shall be four members of the
14 southeastern interstate forest fire protection compact ad-
15 visory committee from the state of West Virginia. Two
16 of the members from the state of West Virginia shall be
17 members of the Legislature of West Virginia, one from the
18 senate and one from the house of delegates, designated
19 by the state's commission on interstate cooperation, and
20 the terms of any such members shall terminate at the time
21 they cease to hold legislative office, and their successors
22 as members shall be named in like manner. The governor
23 shall appoint the other two members from the state of
24 West Virginia, one of whom shall be associated with
25 forestry or forest products industries. Such members
26 shall hold office until their respective successors shall
27 be appointed and qualified. Vacancies occurring in the
28 office of such members for any reason or cause shall
29 be filled by appointment by the governor for the unex-
30 pired term. The director as compact administrator may
31 delegate, from time to time, to any deputy or other sub-

32 ordinate in his department or office, the power to be
33 present and participate, including voting as his repre-
34 sentative or substitute at any meeting of or hearing by or
35 other proceeding of the compact administrators or of the
36 advisory committee. The terms of each of the initial four
37 memberships of the advisory committee, whether ap-
38 pointed at said time or not, shall begin upon the date upon
39 which said compact shall become effective in accordance
40 with article two of said compact. Any member of said
41 advisory committee may be removed from office by the
42 governor upon charges and after a hearing.

Sec. 23. *Compact Committee Powers and Duties; Co-
operation Therewith.*—There is hereby granted to the
2 director, as compact administrator and chairman ex officio
3 of the West Virginia members of said advisory committee,
4 and to the members from West Virginia of said advisory
5 committee, all the powers provided for in the said com-
6 pact and all the powers necessary or incidental to the
7 carrying out of said compact in every particular. All offi-
8 cers of the state of West Virginia are hereby authorized
9 and directed to do all things falling within their respec-
10 tive provinces and jurisdiction necessary or incidental to
11 the carrying out of said compact in every particular, it
12 being hereby declared to be the policy of the state of West
13 Virginia to perform and carry out the said compact and
14 to accomplish the purposes thereof. All officers, bureaus,
15 departments and persons of and in the state government
16 or administration of the state of West Virginia are hereby
17 authorized and directed at convenient times and upon re-
18 quest of said compact administrator, or of said advisory
19 committee, to furnish information and data relating to
20 the purposes of said compact possessed by them or any of
21 them to said compact administrator or said advisory com-
22 mittee. They are further authorized to aid said compact
23 administrator or said advisory committee by loan of per-
24 sonnel, equipment or other means in carrying out the
25 purposes of said compact.
26

Sec. 24. *Other Powers Supplementary.*—Any powers
2 herein granted to the state forester shall be regarded as
3 in aid of and supplemental to, and in no case a limitation

- 4 upon, any of the powers vested in said director by other
- 5 laws of the state of West Virginia or by the laws of the
- 6 states of Alabama, Florida, Georgia, Kentucky, Missis-
- 7 sippi, North Carolina, South Carolina, Tennessee and
- 8 Virginia, or by the Congress or the terms of said compact.

Article 4. Parks and Recreation.

Section

1. Division of parks and recreation; duties and functions.
2. Definitions.
3. State park and recreation system; purposes; financing; disposition and use of revenues.
4. Restaurants and other facilities on department lands.
5. Authority of director to issue park development revenue bonds; grants and gifts.
6. Trustee for holders of bonds.
7. Proceeds of bonds; grants and gifts.
8. Authority of director to pledge revenue as security.
9. Management and control of project.
10. Provisions of constitution and law observed; what approval required.
11. Highway beautification; unlawful disposal of litter, etc.; notice of section; violations; evidence; enforcement; penalties.
12. Correlation of projects and services.
13. Motorboats and other terms defined.
14. Motorboat identification numbers; applications for numbers; fee, displaying; reciprocity; change of ownership; conformity with U. S. regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.
15. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.
16. Motorboats exempted from numbering.
17. Dealers' and manufacturers' certificates of number; application and fees.
18. Boat liveryes.
19. Motorboat muffling.
20. Care in handling watercraft; prohibited operation; collision, accident or casualty; reports.
21. Handling water skis and surfboards.
22. Regattas, races and exhibitions; applications and permits.
23. Incapable operator; owner responsibility.
24. General rules and regulations for motorboating; special rules.
25. Local rules and regulations.

Section 1. *Division of Parks and Recreation; Duties and*

- 2 ***Functions.***—The division of parks and recreation herein
- 3 created and established shall have within its jurisdiction
- 4 and supervision:
- 5 (a) All state parks and state recreation areas, includ-
- 6 ing all lodges, cabins, swimming pools, motorboating and
- 7 all other recreational facilities therein and thereat;
- 8 (b) Administration of all laws and regulations relating
- 9 to beautification of state highways and other public areas;
- 10 (c) The functions and services of the following com-

missions which are hereby made activities of the department of natural resources:

(1) Point Pleasant battle monument commission, created by joint resolution number twenty-four adopted by the Legislature of West Virginia on the sixth day of December, one thousand eight hundred seventy-five;

(2) The Prickett's Fort state park commission, created by chapter forty-eight, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven;

(3) Droop Mountain battlefield commission, created by house joint resolution number eight adopted by the Legislature of West Virginia on the twenty-fifth day of January, one thousand nine hundred twenty-seven;

(4) Philippi battlefield commission, created by house joint resolution number fifteen adopted by the Legislature of West Virginia on the thirtieth day of March, one thousand nine hundred twenty-seven; and

(5) Carnifex Ferry battleground park commission, created by chapter nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-one; and

(d) Administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this chapter.

The chief of the division shall be primarily responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state and shall organize and staff his division for the orderly, efficient and economical accomplishment of these ends.

PART I. PARKS AND RECREATIONAL FACILITIES

Sec. 2. *Definitions.*—As used in this article, unless the context clearly requires a different meaning:

"Bonds" shall mean bonds issued by the director pursuant to this article.

"Cost of project" shall embrace the cost of construction, the cost of all land, property, material and labor which are deemed essential thereto, cost of improvements, fi-

8 nancing charges, interest during construction, and all
9 other expenses, including legal fees, trustees', engineers'
10 and architects' fees which are necessarily or properly inci-
11 dental to the project.

12 "Project" shall be deemed to mean collectively the ac-
13 quisition of land, the construction of any buildings or
14 other works, together with incidental approaches, struc-
15 tures and facilities, reasonably necessary and useful in
16 order to provide new or improved recreational facilities.

17 "Recreational facilities" shall mean and embrace cabins,
18 lodges, swimming pools, golf courses, restaurants, com-
19 missaries and other revenue producing facilities in any
20 state park or forest.

21 "Rent or rental" shall include all moneys received for
22 the use of any recreational facility.

Sec. 3. *State Park and Recreation System; Purposes;*
2 *Financing; Disposition and Use of Revenues.*—In addition
3 to the powers and duties vested in the director elsewhere
4 in this chapter, he shall have the power and duty to es-
5 tablish and maintain a state park and public recreation
6 system, and to do all things necessary and incident to the
7 development and administration thereof. Individual proj-
8 ects of such system may be financed from any moneys of
9 the department available for such purposes, or by the
10 issuance of park development revenue bonds as provided
11 in this article.

12 The purposes of such system shall be to promote con-
13 servation by preserving and protecting natural areas of
14 unique or exceptional scenic, scientific, cultural, archae-
15 logical or historic significance, and to provide outdoor rec-
16 reational opportunities for the citizens of this state and
17 its visitors. In accomplishing such purposes the director
18 shall, insofar as is practical, maintain in their natural
19 condition lands that are acquired for and designated as
20 state parks, and shall not permit public hunting, the ex-
21 ploitation of the minerals or harvesting of timber thereon
22 for commercial purposes.

23 All revenue derived from the operation of the state park
24 and public recreation system shall be expended by the
25 director solely for the acquisition of property for the ex-

26 tension of the system, or for operating, maintaining and
27 improving such system, or for the retirement of park de-
28 velopment revenue bonds as provided in this article.

Sec. 4. *Restaurants and Other Facilities on Department*
2 *Lands.*—The director may, on all areas under his juris-
3 diction and control, operate commissaries, restaurants and
4 other establishments for the convenience of the public.
5 For these purposes the director may purchase equipment,
6 foodstuffs, supplies and commodities, according to law.

Sec. 5. *Authority of Director to Issue Park Development*
2 *Revenue Bonds; Grants and Gifts.*—The director, with
3 the approval of the governor, is hereby empowered to
4 raise the cost of any project, as defined hereinabove, by
5 the issuance of park development revenue bonds of the
6 state, the principal of and interest on which bonds shall
7 be payable solely from the special fund herein provided
8 for such payment. Such bonds shall be authorized by
9 order of the director, approved by the governor, which
10 shall recite an estimate by the director of the cost of the
11 project, and shall provide for the issuance of bonds in an
12 amount sufficient, when sold as hereinafter provided, to
13 produce such cost, less the amount of any grant or grants,
14 gift or gifts received, or in the opinion of the director ex-
15 pected to be received from the United States of America
16 or from any other source. The acceptance by the director
17 of any and all such grants and gifts, whether in money or
18 in land, labor or materials, is hereby expressly authorized.
19 All such bonds shall have and are hereby declared to have
20 all the qualities of negotiable instruments under the law
21 merchant. Such bonds shall bear interest at not more than
22 four per cent per annum, payable semiannually, and shall
23 mature in not more than twenty-five years from their
24 date or dates, and may be made redeemable at the option
25 of the state, to be exercised by the director at such price
26 and under such terms and conditions as the director may
27 fix prior to the issuance of such bonds. The director shall
28 determine the form of such bonds, including coupons to
29 be attached thereto to evidence the right of interest pay-
30 ments, which bonds shall be signed by the director, under
31 the great seal of the state, attested by the secretary of

32 state, and the coupons attached thereto shall bear the
33 facsimile signature of the director. In case any of the
34 officers whose signatures appear on the bonds or coupons
35 shall cease to be such officers before the delivery of such
36 bonds, such signatures shall nevertheless be valid and suf-
37 ficient for all purposes the same as if they had remained
38 in office until such delivery. The director shall fix the
39 denominations of the bonds, the principal and interest of
40 which shall be payable at the office of the treasurer of the
41 state of West Virginia, at the capitol of the state, or, at
42 the option of the holder, at some bank or trust company
43 in the city of New York to be named in the bonds in such
44 medium as may be determined by the director. Such
45 bonds shall be exempt from taxation by the state of West
46 Virginia, or any county or municipality therein. The di-
47 rector may provide for the registration of such bonds in
48 the name of the owner as to principal alone, and as to both
49 principal and interest under such terms and conditions as
50 the director may determine, and shall sell such bonds in
51 such manner as he may determine to be for the best inter-
52 est of the state, taking into consideration the financial
53 responsibility of the purchaser, and the terms and condi-
54 tions of the purchase, and especially the availability of
55 the proceeds of the bonds when required for payment of
56 the cost of the project, such sale to be made at a price not
57 lower than a price which, computed upon standard tables
58 of bond values, will show a net return of five per cent per
59 annum to the purchaser upon the amount paid therefor.
60 The proceeds of such bonds shall be used solely for the
61 payment of the cost of the project, and shall be deposited
62 and checked out as provided by section seven of this arti-
63 cle, and under such further restrictions, if any, as the
64 director may provide. If the proceeds of such bonds, by
65 error in calculation or otherwise, shall be less than the
66 cost of the project, additional bonds may in like manner
67 be issued to provide the amount of the deficiency, and
68 unless otherwise provided for in the trust agreement
69 hereinafter mentioned, shall be deemed to be of the same
70 issue, and shall be entitled to payment from the same
71 fund, without preference or priority as the bonds before

72 issued. If the proceeds of bonds issued for the project
73 shall exceed the cost thereof, the surplus shall be paid
74 into a special fund to be established for payment of the
75 principal and interest of such bonds as specified in the
76 trust agreement provided for in the following section.
77 Such fund may be used for the purchase of any of the out-
78 standing bonds payable from such fund at the market
79 price, but at not exceeding the price, if any, at which such
80 bonds shall in the same year be redeemable, and all bonds
81 redeemed or purchased shall forthwith be cancelled, and
82 shall not again be issued. Prior to the preparation of
83 definitive bonds, the director may, under like restrictions,
84 issue temporary bonds with or without coupons, ex-
85 changeable for definitive bonds upon the issuance of the
86 latter. Such revenue bonds may be issued without any
87 other proceedings or the happening of any other condi-
88 tions or things than those proceedings, conditions and
89 things which are specified and required by this article, or
90 by the constitution of the state. Revenue bonds issued
91 under the authority herein granted shall be eligible as
92 investments for the workmen's compensation fund and
93 as security for the deposit of all public funds.

Sec. 6. *Trustee for Holders of Bonds.*—The director may
2 enter into an agreement or agreements with any trust
3 company, or with any bank having the powers of a trust
4 company, either within or outside the state, as trustee for
5 the holders of bonds issued hereunder, setting forth
6 therein such duties of the state and of the director in re-
7 spect to acquisition, construction, improvement, mainte-
8 nance, operation, repair and insurance of the project, the
9 conservation and application of all moneys, the insurance
10 of moneys on hand or on deposit, and the rights and reme-
11 dies of the trustee and the holders of the bonds, as may
12 be agreed upon with the original purchasers of such bonds,
13 and including therein provisions restricting the individual
14 right of action of bondholders as is customary in trust
15 agreements respecting bonds and debentures of corpora-
16 tions, protecting and enforcing the rights and remedies
17 of the trustee and the bondholders, and providing for
18 approval by the original purchasers of the bonds of the

19 appointment of consulting architects, and of the security
20 given by those who contract to construct the project, and
21 by any bank or trust company in which the proceeds of
22 bonds or rentals shall be deposited, and for approval by
23 the consulting architects of all contracts for construction.
24 All expenses incurred in carrying out such agreement
25 may be treated as a part of the cost of maintenance, oper-
26 ation and repair of the project.

• *Sec. 7. Proceeds of Bonds, Grants and Gifts.*—The pro-
2 ceeds of all bonds sold as provided in this article for any
3 park development project and the proceeds of any grant
4 or gift received by the director for any project financed
5 by the issuance of park development revenue bonds shall
6 be paid to the treasurer of the state of West Virginia, who
7 shall not commingle such funds with any other moneys,
8 but shall deposit them in a separate bank account or ac-
9 counts. The moneys in such accounts shall be paid out on
10 check of the treasurer on requisition of the director, or of
11 such other person as the director may authorize to make
12 such requisition. All deposits of such moneys shall, if re-
13 quired by the treasurer or the director, be secured by
14 obligation of the United States, of the state of West Vir-
15 ginia, or of the director, of a market value equal at all
16 times to the amount of the deposit, and all banking insti-
17 tutions are authorized to give such deposits.

2 *Sec. 8. Authority of Director to Pledge Revenue as*
3 *Security.*—The director shall have authority to pledge all
4 revenue derived from any project as security for any
5 bonds issued under this article to defray the cost of such
6 project. In any case in which the director may deem it
7 advisable, he shall also have the authority to pledge the
8 revenue derived from any existing recreational facilities
9 under his control, or any state park or forest, as additional
10 security for the payment of any bonds issued under the
11 provisions of this article to pay the cost of any park de-
12 velopment project.

2 *Sec. 9. Management and Control of Project.*—The de-
3 partment shall properly maintain, repair, operate, man-
4 age and control the project, fix the rates of rental, and

4 establish by-laws and rules and regulations for the use
5 and operation of the project, and may make and enter into
6 all contracts or agreements necessary and incidental to
7 the performance of its duties and the execution of its
8 powers under this article.

Sec. 10. *Provisions of Constitution and Law Observed;*
2 *What Approval Required.*—It shall not be necessary to
3 secure from any officer or board not named in this article
4 any approval or consent, or any certificate or finding, or
5 to hold an election, or to take any proceedings whatever,
6 either for the construction of any project, or the improve-
7 ment, maintenance, operation or repair thereof, or for the
8 issuance of bonds hereunder, except such as are prescribed
9 by this article or are required by the constitution of the
10 state.

11 Nothing in this article contained shall be so construed or
12 interpreted as to authorize or permit the incurring of
13 state debt of any kind or nature as contemplated by the
14 provisions of the constitution of the state in relation to
15 state debt.

Sec. 11. *Highway Beautification; Unlawful Disposal of*
2 *Litter, etc.; Notice of Section; Violations; Evidence; En-*
3 *forcement; Penalties.*—The director of the department
4 of natural resources in cooperation with the state road
5 commissioner, the department of public safety, the United
6 States forestry service, and other law enforcement agen-
7 cies of local, state and federal governments, shall be re-
8 sponsible for administration and enforcement of all laws
9 and regulations relating to maintenance of cleanliness and
10 improvement of appearances on and along highways,
11 roads, streets, alleys and other public areas and ways of
12 the state and shall make recommendations to the director
13 from time to time concerning means and methods of ac-
14 complishing state highway beautification consistent with
15 the provisions of this chapter.

16 It shall be unlawful to place, deposit, dump or throw,
17 or cause to be placed, deposited, dumped or thrown, any
18 litter, garbage, refuse, trash, cans, bottles, papers, ashes,
19 cigarette or cigar butts, carcass of any dead animal, offal
20 or any other offensive or unsightly matter in or upon any

21 public or private highway, road, street or alley, or upon
22 the surface of any land within one hundred yards thereof
23 without the consent of the owner, or in or upon any
24 private property into or upon which the public is admitted
25 by easement or license, or upon any private property
26 without the consent of the owner, or in or upon any public
27 park or other public property other than in such place
28 as may be set aside for such purpose by the governing
29 body having charge thereof.

30 If any such materials be thrown, cast, dumped or dis-
31 charged from a motor vehicle in violation of the provi-
32 sions hereof, such action shall be deemed prima-facie
33 evidence that the owner and driver of such motor vehicle
34 intended to violate the provisions of this section.

35 The state commissioner of motor vehicles, upon regis-
36 tering a motor vehicle or issuing an operator's or chauff-
37 eur's license, shall issue to the owner or licensee, as the
38 case may be, a copy of this section.

39 The state road commissioner shall cause appropriate
40 signs to be placed at the state boundary on each primary
41 and secondary road, informing those entering the state
42 of the maximum penalty herein provided for disposing
43 of litter in, upon and near highways and roads in violation
44 of this section.

45 No portion of this section shall be construed to restrict
46 a private owner in the use of his own private property or
47 to prohibit the disposal of materials designated in this
48 section in any manner authorized by law.

49 Any person violating any provision of this section shall
50 be guilty of a misdemeanor, and, upon conviction thereof,
51 shall be fined not less than twenty nor more than five
52 hundred dollars or be imprisoned in the county jail for a
53 period of time not exceeding six months, or, in the discre-
54 tion of the court, may be subject to both such fine and
55 imprisonment.

Sec. 12. *Correlation of Projects and Services.*—The
2 chief of the division of parks shall correlate and coordinate
3 his park and recreation programs, projects and develop-
4 ments with the functions and services of other offices and
5 divisions of the department and other agencies of the
6 state government so as to provide, consistent with the

7 provisions of this chapter, suitable and adequate facilities,
8 landscaping, personnel and other services at and about
9 fish hatcheries, game farms, wildlife research areas, feed-
10 ing stations, historic and scenic monuments and markers,
11 and other institutions and activities of the state.

PART II. MOTORBOATING

Sec. 13. *Motorboats and Other Terms Defined.*—As used
2 in this section and subsequent sections of this article,
3 unless the context clearly requires a different meaning:

4 (1) "Vessel" means every description of watercraft,
5 other than a seaplane on the water, used or capable of
6 being used as a means of transportation on water;

7 (2) "Motorboat" means any vessel propelled by ma-
8 chinery, whether or not such machinery is the principal
9 source of propulsion, but shall not include a vessel which
10 has a valid marine document issued by the bureau of
11 customs of the United States government or any federal
12 agency successor thereto, nor to a vessel powered by a
13 motor of five horsepower or less; and

14 (3) "Owner" means a person, other than a lienholder,
15 having the property in or title to a motorboat. The term
16 includes a person entitled to the use or possession of a
17 motorboat subject to an interest in another person, re-
18 served or created by agreement and securing payment or
19 performance of an obligation, but the term excludes a
20 lessee under a lease not intended as security.

Sec. 14. *Motorboat Identification Numbers; Applica-
2 tions for Numbers; Fee; Displaying; Reciprocity; Change
3 of Ownership; Conformity with U. S. Regulations; Issuing
4 Agents; Records; Renewal of Certificate; Transfer of In-
5 terest, Abandonment, etc.; Change of Address; Unauthor-
6 ized Numbers; Information to Be Furnished Assessors.*—
7 Every motorboat, as herein defined, operating upon public
8 waters within the territorial limits of this state, shall be
9 numbered as herein provided.

10 (a) The owner of each motorboat requiring numbering
11 by this state shall file an application for a number with
12 the director on forms approved by him. The application
13 shall be signed by the owner of the motorboat and shall
14 be accompanied by a fee of five dollars. All such fees

15 shall be deposited in the state treasury to the credit of the
16 state general fund. Upon receipt of the application in
17 approved form, the director shall enter the same upon the
18 records of his office and issue to the applicant a number
19 awarded to the motorboat and the name and address of
20 the owner. The owner shall paint on or attach to each side
21 of the bow of the motorboat the identification number in
22 such manner as may be prescribed by rules and regula-
23 tions of the director in order that it may be clearly visible.
24 The number shall be maintained in legible condition. The
25 certificate of number shall be pocket size and shall be
26 available at all times for inspection on the motorboat for
27 which issued, whenever such motorboat is in operation.

28 (b) The owner of any motorboat already covered by a
29 number in full force and effect which has been awarded
30 to it pursuant to then operative federal law or a federally-
31 approved numbering system of another state shall record
32 the number prior to operating the motorboat on the
33 waters of this state in excess of the ninety-day reciprocity
34 period provided for in section sixteen of this article.
35 Such recordation shall be in the manner and pursuant to
36 the procedure required for the award of a number under
37 subsection (a) of this section, except that no additional
38 or substitute number shall be issued.

39 (c) Should the ownership of a motorboat change, a
40 new application form with fee shall be filed with the di-
41 rector and a new certificate of number shall be awarded
42 in the same manner as provided for in an original award
43 of number.

44 (d) In the event that an agency of the United States
45 government shall have in force an overall system of
46 identification numbering for motorboats within the United
47 States, the numbering system employed pursuant to this
48 article by the commission shall be in conformity there-
49 with.

50 (e) The director may designate as issuing agent the
51 clerk of any county court and such other persons in each
52 county, as he deems advantageous to provide for the
53 issuance of certificates of number in accordance with the
54 provisions of this article. For services rendered in issuing
55 such certificates, and collecting and paying over such

56 numbering fees, each issuing agent, other than a state or
57 county official, shall charge and retain an additional fee
58 of twenty-five cents from the person obtaining the certifi-
59 cate of number. Every such issuing agent, unless already
60 under bond with the director as an agent for the collection
61 of its moneys, shall file a bond with the director, payable
62 to the state of West Virginia, in an amount to be fixed by
63 the director at not more than one thousand dollars, before
64 the supply of certificates of number is delivered to him,
65 conditioned upon the faithful performance of his obliga-
66 tion to issue certificates only in conformance with the pro-
67 visions of this article and the regulations of the direc-
68 tor. Each issuing agent, on the first day of each month,
69 shall remit to the director all moneys collected for the
70 director during the preceding month, and shall accompany
71 his remittance with a report showing the name of the
72 county, the names and addresses of the persons paying
73 the same, and the date of the receipt thereof.

74 (f) All records of the director made or kept pursuant
75 to this section shall be public records.

76 (g) Such license shall be valid only until the last day
77 of the calendar year in which the same is issued. If at
78 the end of such year ownership has remained unchanged,
79 such owner shall, upon application and payment of a fee
80 of two dollars, be granted a renewal of such certificate of
81 number for an additional one-year period.

82 (h) The owner shall furnish the director notice of the
83 transfer of all or any part of his interest, other than the
84 creation of a security interest, in a motorboat numbered
85 in this state pursuant to subsections (a) and (b) of this
86 section, or of the destruction or abandonment of such
87 motorboat, within fifteen days thereof. Such transfer,
88 destruction or abandonment shall terminate the certifi-
89 cate of number for such motorboat, except that in the
90 case of a transfer of a part interest which does not affect
91 the owner's right to operate such motorboat, such transfer
92 shall not terminate the certificate of number.

93 (i) Any holder of a certificate of number shall notify
94 the director within fifteen days if his address no longer
95 conforms to the address appearing on the certificate and
96 shall, as a part of such notification, furnish the director

97 with his new address. The director may provide in his
98 rules and regulations for the surrender of the certificate
99 bearing the former address and its replacement with a
100 certificate bearing the new address or for the alteration
101 of an outstanding certificate to show the new address of
102 the holder.

103 (j) No number other than the number awarded to a
104 motorboat or granted reciprocity pursuant to this article
105 shall be painted, attached or otherwise displayed on
106 either side of the bow of such motorboat.

107 (k) It shall be the duty of the director on or before
108 January thirtieth of each year, commencing with the year
109 one thousand nine hundred sixty, to forward to the asses-
110 sor of each county a list of the names and addresses of
111 all persons, firms and corporations owning vessels and
112 operating the same or other boats registered with the
113 director under the provisions of this article. In furnishing
114 this information to each county assessor, the director shall
115 include in his report such information as is made avail-
116 able to him in the reports and registrations he receives as
117 to make, model, value and cost price of such vessels and
118 other equipment required to be registered for use by said
119 owner or operator thereof under the provisions of this
120 article: *Provided, however,* That the director need not
121 furnish such information to the assessor if the cost price
122 of such vessel does not exceed two hundred dollars nor
123 the cost of the motor does not exceed one hundred
124 seventy-five dollars.

Sec. 15. *Motorboat Classification; Required Lights and*
2 *Equipment; Rules and Regulations; Pilot Rules.*—(a)
3 Motorboats subject to the provisions of this article shall
4 be divided into four classes as follows:

5 Class A. Less than sixteen feet in length;

6 Class 1. Sixteen feet or over and less than twenty-six
7 feet in length;

8 Class 2. Twenty-six feet or over and less than forty
9 feet in length;

10 Class 3. Forty feet or over.

11 (b) Classes 1, 2 and 3 motorboats in all weathers from
12 sunset to sunrise shall carry and exhibit the following
13 lights when under way, and during such time no other
14 lights which may be mistaken for those prescribed shall
15 be exhibited.

16 (1) Every motorboat of Class 1 shall carry the follow-
17 ing lights:

18 First. A bright white light aft to show all around the
19 horizon;

20 Second. A combined lantern in the fore part of the
21 vessel and lower than the white light aft, showing green
22 to starboard and red to port, so fixed as to throw the light
23 from right ahead to two points abaft the beam on their
24 respective sides.

25 (2) Every motorboat of Classes 2 and 3 shall carry the
26 following lights:

27 First. A bright white light in the fore part of the vessel
28 as near the stem as practicable, so constructed as to show
29 an unbroken light over an arc of the horizon of twenty
30 points of the compass, so fixed as to throw the light ten
31 points on each side of the vessel; namely, from right
32 ahead to two points abaft the beam on either side;

33 Second. A bright white light aft to show all around the
34 horizon and higher than the white light forward;

35 Third. On the starboard side a green light so con-
36 structed as to show an unbroken light over an arc of the
37 horizon of ten points of the compass, so fixed as to throw
38 the light from right ahead to two points abaft the beam
39 on the starboard side. On the port side a red light so
40 constructed as to show an unbroken light over an arc of
41 the horizon of ten points of the compass, so fixed as to
42 throw the light from right ahead to two points abaft the
43 beam on the port side. The said side lights shall be fitted
44 with inboard screens of sufficient height so set as to pre-
45 vent these lights from being seen across the bow.

46 (3) Motorboats of Class 1 when propelled by sail alone
47 shall carry the combined lantern, but not the white light
48 aft, prescribed by this section. Motorboats of Classes 2
49 and 3 when so propelled, shall carry the colored side
50 lights, suitably screened, but not the white lights, pre-

51 scribed by this section. Motorboats of all classes, when so
52 propelled, shall carry, ready at hand, a lantern or flash-
53 light showing a white light which shall be exhibited in
54 sufficient time to avert collision.

55 (4) Every white light prescribed by this section shall
56 be of such character as to be visible at a distance of at
57 least two miles. Every colored light prescribed by this
58 section shall be of such character as to be visible at a
59 distance of at least one mile. The word "visible" in this
60 subsection, when applied to lights, shall mean visible on
61 a dark night with clear atmosphere.

62 (5) When propelled by sail and machinery any motor-
63 boat shall carry the lights required by this section for a
64 motorboat propelled by machinery only.

65 (c) Any vessel may carry and exhibit the lights re-
66 quired by the Federal Regulations for Preventing Col-
67 lisions at Sea, one thousand nine hundred forty-eight,
68 Federal Act of October eleven, one thousand nine hundred
69 fifty-one, (33 USC 143-147d) as amended, in lieu of the
70 lights required by subsection (b) of this section.

71 (d) Every motorboat of Class 1, 2, or 3 shall be provided
72 with an efficient whistle or other sound-producing me-
73 chanical appliance.

74 (e) Every motorboat of Class 2 or 3 shall be provided
75 with an efficient bell.

76 (f) Every motorboat shall carry at least one life pre-
77 server, or life belt, or ring buoy, or other device of the
78 sort prescribed by regulations of the commission for each
79 person on board, so placed as to be readily accessible:
80 *Provided*, That every motorboat carrying passengers for
81 hire shall carry so placed to be readily accessible at least
82 one life preserver of the sort prescribed by the regulations
83 of the director for each person on board.

84 (g) Every motorboat shall be provided with such
85 number, size, and type of fire extinguishers, capable of
86 promptly and effectually extinguishing burning gasoline,
87 as may be prescribed by the regulations of the director,
88 which fire extinguishers shall be at all times kept in con-
89 dition for immediate and effective use and shall be so
90 placed as to be readily accessible.

91 (h) The provisions of subsections (d), (e) and (g) of
92 this section shall not apply to motorboats while competing
93 in any race conducted pursuant to section twenty-two of
94 this article, or, if such boats be designed and intended
95 solely for racing while engaged in such navigation as is
96 incidental to the tuning up of the boats and engines for
97 the race.

98 (i) Every motorboat shall have the carburetor or
99 carburetors of every engine therein (except outboard
100 motors) using gasoline as fuel, equipped with such effi-
101 cient flame arrestor, backfire trap, or other similar device
102 as may be prescribed by the regulations of the director.

103 (j) Every such motorboat and every such vessel, except
104 open boats using as fuel any liquid of a volatile nature,
105 shall be provided with such means as may be prescribed
106 by the regulations of the director for properly and effi-
107 ciently ventilating the bilges of the engine and fuel
108 tank compartments so as to remove any explosive or in-
109 flammable gases.

110 (k) The director is hereby authorized to make rules
111 and regulations modifying the equipment requirements
112 contained in this section to the extent necessary to keep
113 these requirements in conformity with the provisions of
114 the federal navigation laws or with the navigation rules
115 promulgated by the United States coast guard.

116 (l) The director is hereby authorized to establish and
117 maintain, for the operation of vessels on the waters of
118 this state, pilot rules in conformity with the pilot rules
119 contained in the federal navigation laws or the navigation
120 rules promulgated by the United States coast guard.

121 (m) No person shall operate or give permission for the
122 operation of a vessel which is not equipped as required by
123 this section or modification thereof.

Sec. 16. *Motorboats Exempted from Numbering.*—A
2 motorboat shall not be required to be numbered under
3 this article if it is:

4 (1) Already covered by a number in full force and
5 effect which has been awarded to it pursuant to federal
6 law or a federally-approved numbering system of another

- 7 state: *Provided*, That such boat shall not have been within
8 this state for a period in excess of ninety consecutive days;
- 9 (2) A motorboat from a country other than the United
10 States temporarily using the waters of this state;
- 11 (3) Motorboats used exclusively for racing while par-
12 ticipating in races, and the preparation therefor, which
13 have been authorized pursuant to the provisions of sec-
14 tion twenty-two of this article.

Sec. 17. *Dealers' and Manufacturers' Certificate of Num-
2 ber; Application and Fees.*—Dealers' and manufacturers'
3 certificate of number, containing the word "manufacturer"
4 or "dealer", as appropriate, may be used in connection
5 with the operation of any motorboat in the possession of
6 such dealer or manufacturer, when the boat is being used
7 for demonstrative purposes. Application for a dealer's or
8 manufacturer's certificate of number shall be made upon a
9 form provided by the director, and shall contain such
10 information as may be required by the director. Upon
11 receipt of the application and upon the payment of a fee
12 of five dollars for the initial certificate of number, and
13 five dollars for each additional certificate of number, the
14 director shall issue to the applicant a manufacturer's or
15 dealer's certificate of number which shall contain the
16 word "manufacturer" or "dealer" in lieu of a description
17 of the boat. The manufacturer or dealer may have the
18 number awarded to him printed upon or attached to a
19 removable sign or signs to be temporarily but firmly
20 mounted upon or attached to the boat being demonstrated,
21 so long as the display meets the requirements of the pro-
22 visions of this article and regulations issued hereunder.

Sec. 18. *Boat Liveries.*—(a) The owner of a boat livery
2 shall cause to be kept a record of the name and address
3 of the person or persons hiring any vessel which is de-
4 signed or permitted by him to be operated as a motor-
5 boat, the identification number thereof, and the departure
6 date and time, and the expected time of return. The
7 record shall be preserved for at least six months.

8 (b) Neither the owner of a boat livery, nor his agent
9 or employee, shall permit any motorboat or any vessel

10 designed or permitted by him to be operated as a motor-
11 boat to depart from his premises unless it shall have been
12 provided, either by owner or renter, with the equipment
13 required pursuant to section fifteen of this article and
14 any rules and regulations made pursuant thereto.

Sec. 19. *Motorboat Muffling.*—The exhaust of every
2 internal combustion engine used on any motorboat shall
3 be effectively muffled by equipment so constructed and
4 used as to muffle the noise of the exhaust in a reasonable
5 manner. The use of cutouts is prohibited, except for
6 motorboats competing in a regatta or boat race approved
7 as provided in section twenty-two of this article, and for
8 such motorboats while on trial runs during a period not
9 to exceed seventy-two hours immediately preceding such
10 regatta or race, and for such motorboats while competing
11 in official trials for speed records during a period not to
12 exceed seventy-two hours immediately following such
13 regatta or race.

Sec. 20. *Care in Handling Watercraft; Prohibited Operation; Collision, Accident or Casualty; Reports.*—(a)
2 No person shall operate any motorboat or vessel, or
3 manipulate any water skis, surfboard, or similar device
4 in a reckless or negligent manner so as to endanger the
5 life, limb, or property of any person.

7 (b) No person shall operate any motorboat or vessel,
8 or manipulate any water skis, surfboard, or similar device
9 while intoxicated or under the influence of any narcotic
10 drug, barbiturate or marijuana.

11 (c) It shall be the duty of the operator of a vessel involved
12 in a collision, accident, or other casualty, so far
13 as he can do so without serious danger to his own vessel,
14 crew, and passengers (if any), to render to other persons
15 affected by the collision, accident, or other casualty such
16 assistance as may be practicable and as may be necessary
17 in order to save them from or minimize any danger
18 caused by the collision, accident, or other casualty, and
19 also to give his name, address and identification of his
20 vessel in writing to any person injured and to the owner
21 of any property damaged in the collision, accident, or
22 other casualty.

23 (d) In the case of a collision, accident, or other casualty
24 involving a vessel, the operator thereof, if the collision,
25 accident, or other casualty results in death or injury to
26 a person or damage to property in excess of one hundred
27 dollars, shall file with the director a full description of
28 the collision, accident, or other casualty, including such
29 information as the director may, by regulation, require.
30 In accordance with any request duly made by an author-
31 ized official or agency of the United States, any informa-
32 tion compiled or otherwise available to the director pur-
33 suant to this subsection shall be transmitted to such of-
34 ficial or agency of the United States.

Sec. 21. *Handling Water Skis and Surfboards.*—(a) No
2 person shall operate a vessel on any waters of this state
3 towing a person or persons on water skis, surfboard, or
4 similar device, nor shall any person engage in water ski-
5 ing, surfboarding, or similar activity at any time between
6 the hours from one hour after sunset to one hour before
7 sunrise.

8 (b) The provisions of subsection (a) of this section do
9 not apply to a performer engaged in a professional exhibi-
10 tion, or a person or persons engaged in an activity author-
11 ized under section twenty-two of this article.

12 (c) No person shall operate or manipulate any vessel,
13 tow rope or other device by which the direction or loca-
14 tion of water skis, surfboard, or similar device may be
15 affected or controlled in such a way as to cause water
16 skis, surfboard, or similar device, or any person thereon
17 to collide with or strike against any object or person.

Sec. 22. *Regattas, Races and Exhibitions; Applications*
2 *and Permits.*—(a) The department may authorize the
3 holding of regattas, motorboat or other boat races, marine
4 parades, tournaments or exhibitions on any waters of this
5 state. It shall adopt and may, from time to time, amend
6 regulations concerning the safety of motorboats and other
7 vessels and persons thereon, either observers or par-
8 ticipants. Whenever a regatta, motorboat or other boat
9 race, marine parade, tournament or exhibition is proposed
10 to be held, the person in charge thereof, shall, at least
11 fifteen days prior thereto, file an application with the

12 director for permission to hold such regatta, motorboat
13 or other boat race, marine parade, tournament or exhibi-
14 tion. The application shall set forth the date, time and lo-
15 cation where it is proposed to hold such regatta, motor-
16 boat or other boat race, marine parade, tournament or
17 exhibition, and it shall not be conducted without author-
18 ization of the director in writing.

19 (b) The provisions of this section shall not exempt any
20 person from compliance with the applicable federal law
21 or regulation, but nothing contained herein shall be con-
22 strued to require the securing of a state permit pursuant
23 to this section if a permit therefor has been obtained from
24 an authorized agency of the United States.

Sec. 23. *Incapable Operator; Owner Responsibility.*—

2 No person who is the owner of any motorboat, or has such
3 in his charge or control shall act or permit the same to be
4 operated by any person who, by reason of any physical or
5 mental disability, is incapable of operating such motor-
6 boat under all the prevailing circumstances.

Sec. 24. *General Rules and Regulations for Motorboat-
2 ing; Special Rules.*—The director is hereby authorized
3 and empowered to prescribe and to enforce:

4 (a) General rules and regulations to be observed in the
5 operation or navigation of motorboats upon, over or
6 through the waters of this state which he shall deem
7 necessary for the public health or safety of persons or
8 property on or in such waters, or for the preservation of
9 all forms of useful aquatic life, particularly as to speed,
10 running, lights, signals, courses, channels, rights of way,
11 and the disposal of oil, gas, gasoline or other wastes from
12 such boats;

13 (b) Special rules and regulations for such particular,
14 artificial or natural areas of water, for further limiting,
15 restricting, or prohibiting the operation or navigation of
16 motorboats thereof to protect the public health or to pro-
17 tect and preserve useful aquatic life.

Sec. 25. *Local Rules and Regulations.*—(a) The pro-
2 visions of this article and of other applicable laws of this
3 state, shall govern the operation, equipment, numbering
4 and all other matters relating thereto whenever any vessel

5 shall be operated on the waters of this state, or when any
6 activity regulated by this article shall take place thereon,
7 but nothing in this article shall be construed to prevent
8 the adoption of any ordinance or local law relating to
9 operation and equipment of vessels the provisions of
10 which are identical to the provisions of this article,
11 amendments thereto or regulations issued thereunder:
12 *Provided*, That such ordinances or local laws shall be
13 operative only so long as and to the extent that they con-
14 tinue to be identical to provisions of this article, amend-
15 ments thereto or regulations issued thereunder.

16 (b) Any subdivision of this state may, at any time, but
17 only after public notice, make formal application to the
18 director for special rules and regulations with reference
19 to the operation of vessels on any waters within its terri-
20 torial limits and shall set forth therein the reasons which
21 make such special rules or regulations necessary or ap-
22 propriate.

23 (c) The director is hereby authorized to make special
24 rules and regulations with reference to the operation of
25 vessels on any waters within the territorial limits of any
26 subdivision of this state.

Article 5. Water Resources.

Section

1. Division of water resources; duties and functions.
2. Definitions.
3. Water resources board; creation, composition and organization.
4. Board functions, services and reports.
5. Board powers and duties.
6. Condemnation; pollution control.
7. Cooperation with other governments and agencies.
8. Pollution abatement and control; reports; permits; citations.
9. Pollution orders; procedure; enforcement.
10. Compliance with orders; finances and funds; procedures.
11. Municipal projects; finances; law controlling.
12. Time of compliance; procedures; penalties.
13. Time extension; procedures; penalties.
14. Judicial review.
15. Location and construction of slack-water dams.
16. Dam construction initiated; approval by public authority; costs; plans.
17. Requests to director for dam construction; costs; procedure.
18. Payment of dam costs; deficiencies and refunds.
19. Contracts for dam construction.
20. Dam supervision, maintenance and management.
21. Titles and leases to lands; management and funds.
22. Future plans for road and other construction; coordination.
23. Water areas beautification; investigations; enforcement.
24. Litter along streams; violations; evidence; penalties.

Section 1. *Division of Water Resources; Duties and Functions.*—The division of water resources, herein created and established, shall have within its jurisdiction and supervision the state water resources board, the Ohio river valley water sanitation commission from the state of West Virginia, the interstate commission on the Potomac river basin from the state of West Virginia, and the administration and enforcement of all laws relating to slack-water dams, stream and water areas beautification, and the conservation, development, protection, enjoyment and use of the water resources of the state consistent with the provisions of this chapter. The chief of the division shall be primarily responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state and shall organize and staff his division so as to accomplish these ends in an orderly, efficient and economical manner. The division chief shall give consideration to other functions and services of the department and, wherever practicable, shall coordinate the plans and programs of his division with the functions and services of other divisions, offices and activities of the department.

PART I. WATER RESOURCES BOARD

Sec. 2. *Definitions.*—Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Board" shall mean the state water resources board;

(b) "Water resources" shall mean any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused water on the surface of the ground, and water percolating, standing or flowing beneath the surface of the ground;

(c) "Domestic use" shall mean any use of water resources by occupants of land for personal need and for household purposes, including (1) uses for drinking, bathing, cooking and sanitation; (2) uses for maintaining poultry and animals kept for household sustenance; (3) uses for maintaining household pets; and (4) uses for

17 heating and cooling private residences and for maintain-
18 ing noncommercial lawns, gardens, or orchards appurte-
19 nant to private residences;

20 (d) "Commercial use" shall mean any use of water
21 resources other than domestic use;

22 (e) "Pollution" shall mean the discharge or deposit,
23 directly or indirectly, of sewage, industrial wastes or
24 other substances, in such condition, manner or quantity
25 as may contaminate or alter the physical, chemical or
26 biological properties of any of the waters of the state to
27 such extent as to render such waters directly or indirectly
28 detrimental to the public health or unreasonably and ad-
29 versely affect such waters for present or future domestic,
30 commercial, industrial, agricultural, recreational or other
31 legitimate uses; and

32 (f) "Person" shall mean any and all persons natural
33 or artificial, including any municipal or private corpora-
34 tion organized or existing under the laws of this or any
35 other state or country, any county court, governmental
36 institution, agency or political subdivision as well as any
37 firm or association.

Sec. 3. *Water Resources Board; Creation, Composition
2 and Organization.*—A state water resources board is here-
3 by created and established as successor to the state water
4 commission and the state water resources commission.
5 It shall be a public corporation and as such may sue and
6 be sued, plead and be impleaded, contract and be con-
7 tracted with, and shall have and use a common seal.

8 The board shall be composed of the state director of
9 health, the superintendent of the state geological and eco-
10 nomic survey, the director of the department of natural
11 resources and four other members to be appointed by the
12 governor with the advice and consent of the senate. The
13 director of the department of natural resources shall be
14 the chairman of the board. Members of the commission
15 in office at the effective date of this section shall continue
16 in office as members of the board until the new appointees
17 have been appointed and qualified. The terms of office of
18 the members of the board to be appointed by the governor

19 shall be for six years. The first appointments made under
20 the provisions of this section shall be as follows: Two
21 members for three years and two members for six years;
22 as these terms expire, the offices shall be filled for six-
23 year terms. The members of the board shall receive no
24 salary or remuneration for their services as such board
25 members, but they shall be reimbursed, out of moneys
26 appropriated for such purposes, all sums which they nec-
27 essarily shall expend in the discharge of their duties as
28 members of such board. The director of the division of
29 sanitary engineering in the state health department shall
30 perform such services as the board may request of him in
31 connection with its duties hereunder and he shall be reim-
32 bursed, out of moneys appropriated for such purposes, all
33 sums which he necessarily shall expend in the perform-
34 ance of such services. Nothing contained in this article,
35 however, shall be construed to limit or interfere with the
36 power of the state health department to select, employ
37 and direct the director of the division of sanitary engi-
38 neering of said department, or any employee thereof who
39 in any way may perform any services for the board. The
40 college of engineering at West Virginia University, under
41 the direction of the dean thereof, shall, insofar as it can,
42 without interference with its usual and regular activities,
43 aid and assist the board in the study and research of ques-
44 tions connected with pollution of waters. The dean of the
45 college of engineering shall be reimbursed out of moneys
46 appropriated for such purposes, any and all sums which
47 he necessarily shall expend in the performance of any
48 services he may render to the board under the provisions
49 hereof.

50 A majority of the board shall constitute a quorum for
51 transaction of business. The board shall meet at such
52 times and places as it may determine and shall meet on
53 call of the chairman. The board shall keep an accurate
54 record of all of its proceedings and maintain such board
55 records and shall make certificates thereof or therefrom
56 as may be required by law. The chief of the division of
57 water resources shall be the executive secretary of the
58 board.

Sec. 4. *Board Functions, Services and Reports.*—The
2 board shall make surveys and investigations of the water
3 resources of the state and, as soon as practicable, shall
4 inventory the water resources of the state and to the ex-
5 tent practicable shall divide the state into watershed
6 drainage areas in making this inventory. The board shall
7 investigate and study the problems of agriculture, indus-
8 try, conservation, health, stream pollution, domestic and
9 commercial uses and allied matters as they relate to water
10 resources of the state, and shall make and formulate com-
11 prehensive plans and recommendations for the further
12 development, improvement, protection, preservation, reg-
13 ulation and use of such water resources, giving proper
14 consideration to the hydrologic cycle in which water
15 moves. Annually, not later than the first of November,
16 the board shall prepare and publish a full report on the
17 board's work as to collection and evaluation of the infor-
18 mation which has been obtained in accordance with the
19 requirements of this section and shall include in this re-
20 port the plans and recommendations which have been
21 formulated pursuant to the requirements of this section.
22 The report shall include the board's reasons for such plans
23 and recommendations, as well as any changes in the law
24 which are deemed desirable to effectuate such plans and
25 recommendations. Such reports shall be made available
26 to the public at a price to be determined by the board.

27 The board may request and, upon its request, shall be
28 entitled to receive from any agency of the state or any
29 political subdivision thereof, or from any other person
30 who engages in a commercial use or controls any of the
31 water resources of the state, such necessary information
32 and data as will assist the board in obtaining a complete
33 picture of the water resources of the state and their exist-
34 ing control and commercial uses. The board shall reim-
35 burse such agencies, political subdivisions and other per-
36 sons for any expenses which would not otherwise have
37 been incurred in making such information and data avail-
38 able to the board.

39 The board shall study questions arising in connection
40 with stream flow and pollution of waters in the state and

41 make reports and recommendations in respect thereto;
42 and, in cooperation with the college of engineering at
43 West Virginia University, make research, investigation
44 and scientific experiments in efforts to discover economical
45 and practical methods for elimination, disposal and treat-
46 ment of industrial wastes and the control and correction
47 of stream pollution; and to this end the board may co-
48 operate with any public or private agency and receive
49 therefrom, on behalf of the state, and for deposit in the
50 state treasury, any money which such agency may con-
51 tribute as its part of the expense thereof, and gifts, dona-
52 tions or contributions received as aforesaid may be ex-
53 pended according to the requirements or directions of the
54 donor or contributor without the necessity of an appro-
55 priation therefor, except that an accounting thereof shall
56 be made in the fiscal reports of the board.

Sec. 5. *Board Powers and Duties.*—In addition to all
2 other powers and duties of the board as prescribed in this
3 article or elsewhere by law, the board shall have and may
4 exercise the following powers and authority and perform
5 the following duties:

6 (1) To enter into compacts and agreements concerning
7 this state's share of waters in watercourses where a por-
8 tion of such waters are contained within the territorial
9 limits of a neighboring state or states, subject to the ap-
10 proval of the Legislature;

11 (2) To cooperate with federal officers and agencies,
12 other state agencies and officers, interstate agencies, and
13 other interested persons in the conservation, improvement
14 and development of water resources, and to this end the
15 board may receive money from such agencies and persons,
16 on behalf of the state: *Provided*, That all moneys received
17 as provided in this subsection shall be paid into a special
18 fund which is hereby created in the state treasury and
19 shall be expended, under the direction of the board, solely
20 for the purpose or purposes for which the grant, gift, or
21 contribution shall have been made;

22 (3) To conduct, or contract for the conducting of, sci-
23 entific investigations, experiments and research and to

24 collect data concerning the water resources of the state
25 and pollution;

26 (4) To enter at all reasonable times upon any land,
27 public or private, for the purpose of making surveys,
28 examinations, investigations and studies needed in the
29 gathering of facts concerning water resources and their
30 use or pollution thereof, subject to responsibility for any
31 damage to the property entered;

32 (5) To hold public hearings pursuant to rules and
33 regulations established by the board, to obtain the neces-
34 sary information to carry out the purposes of this article,
35 particularly with reference to the formulation of plans
36 and recommendations required by the provisions of sec-
37 tion four of this article and, at any such hearing, the board
38 or its duly authorized agents, shall have the power to
39 administer oaths, to take testimony, to issue subpoenas
40 and to compel the attendance of witnesses; and

41 (6) To advise all users of water resources as to the
42 availability of water resources and the most practicable
43 method of water diversion, use, development, and con-
44 servation.

Sec. 6. *Condemnation; Pollution Control.*—All persons
2 not otherwise having the right to condemn lands to ef-
3 fectuate the purposes of this article shall be vested with
4 the right of eminent domain under the provisions of chap-
5 ter fifty-four of the code of West Virginia, one thousand
6 nine hundred thirty-one, as amended, upon application to
7 the board for, and the entry by the board of, an order find-
8 ing that the use by the applicant of a specified interest in
9 a specifically described parcel of land is necessary in con-
10 nection with the elimination or control of a substantial
11 pollution or the substantial reduction of the pollution of
12 any of the waters of the state and directing the applicant
13 to put the said land to use for such purpose within a
14 reasonable time after the acquisition of title or the right
15 of possession thereof.

Sec. 7. *Cooperation with Other Governments and Agen-*
2 *cies.*—The board is hereby designated as the water pollu-
3 tion agency for this state for all purposes of the Water

4 Pollution Control Act, Public Law 845, 80th Congress (62
5 Stat. 1155) approved June thirtieth, one thousand nine
6 hundred forty-eight, hereinafter called the "federal act",
7 and is hereby authorized to take all action necessary or
8 appropriate to secure to this state the benefits of said act.
9 In carrying out the purposes of this section the board, in
10 addition to any other action which may be necessary or
11 appropriate, is authorized to cooperate with the surgeon
12 general of the United States public health service and
13 other agencies of the federal government, other states,
14 interstate agencies and other interested parties in all
15 matters relating to water pollution, including the develop-
16 ment of programs for eliminating or reducing pollution
17 and improving the sanitary conditions of waters, and on
18 behalf of this state to apply for and receive funds made
19 available to the board under the aforesaid federal act by
20 any agency of the federal government: *Provided*, That all
21 moneys received from any federal agency as herein pro-
22 vided shall be paid into the state treasury and shall be
23 expended, under the direction of the board, solely for the
24 purpose or purposes for which the grant or grants shall
25 have been made; to approve projects for which applica-
26 tion for loans or grants under the federal act is made by
27 any municipality (including any city, town, district or
28 other public body created by or pursuant to the laws of
29 this state and having jurisdiction over disposal of sewage,
30 industrial wastes or other substances) or agency of this
31 state or by any interstate agency; to participate through
32 its authorized representatives in proceedings under the
33 federal act to recommend measures for abatement of
34 water pollution originating in this state; to give consent
35 on behalf of this state to requests by the federal security
36 administrator to the attorney general of the United States
37 for the bringing of suits for abatement of such pollution;
38 and to consent to the joinder as a defendant in such suit
39 of any person who is alleged to be discharging matter
40 contributing to the pollution, abatement of which is
41 sought in such suit. Whenever a federal law requires the
42 approval or recommendation of a state agency or any
43 political subdivision of the state in any matter relating

44 to the water resources of the state, the board, subject to
45 approval of the Legislature, is hereby designated as the
46 sole agency to give the approval or recommendation re-
47 quired by the federal law, unless the federal law spe-
48 cifically requires the approval or recommendation of some
49 other state agency or political subdivision of the state.

Sec. 8. *Pollution Abatement and Control; Reports; Per-
mits; Citations.*—Any and all persons causing a material
contribution of sewage, industrial wastes or other pol-
luting substances to the waters of the state, shall file with
the board such information as the board may require
with regard thereto, including, but not limited to, the
kind, characteristics and rate of flow.

No person shall, without first securing a permit from
the board, construct, install or operate a new sewer, dis-
posal system or treatment works; extensions, modifica-
tions or additions to new or existing disposal systems or
treatment works; extensions, modifications or additions
to industrial or commercial establishments or the opera-
tion thereof, or make or cause to be made any new outlet,
or to add to the load from any existing outlet; which
would cause a material pollution of the waters of the state.
For the purposes herein, the board may issue temporary
or conditional permits and renew, change, modify, amend
or revoke the same. Any person who is denied a permit
by the board, or who has such permit revoked or modified,
shall be afforded an opportunity for hearing in connection
therewith, as hereinafter provided, upon written appli-
cation filed with the board within twenty days of receipt
of such denial, revocation or modification, which notice
shall be communicated to the board by registered mail,
addressed to its chairman or secretary, and upon any
other persons affected, personally or by registered mail.
All such applications for permits primarily relating to
sewage shall be submitted to the state department of
health in such form as shall have been approved by both
the board and the department of health. After the deci-
sion by the state department of health in regard thereto
and the reasons have been noted therein, the application,
the notation of the health department's decision and other

35 papers making up the file shall be forwarded by the de-
36 partment of health to the board. The board's permit or
37 other decision shall be returned with the entire file to the
38 state department of health, which shall notify the appli-
39 cant in writing of the decisions of both the health depart-
40 ment and the board, enclosing certificates where granted,
41 and shall deliver to the board a copy of such notification.

42 The procedures prescribed and detailed in this section
43 shall not be employed or construed to impede, interfere
44 with, delay or prevent prompt and expeditious action by
45 the director, the attorney general, any prosecuting attor-
46 ney, or other natural resources authority acting under
47 other provisions of this chapter when such prompt and
48 expeditious action is, in the opinion and judgment of the
49 acting authority, necessary to prevent or abate water
50 pollution.

51 Any person causing the pollution of any water, or al-
52 leged to be causing the pollution of any water, may be
53 cited by the board on its own motion, or by any member
54 thereof, or the executive secretary on his own motion, to
55 appear not less than fifteen nor more than thirty days
56 from the date of service of such citation at a place desig-
57 nated by it, within the county wherein the pollution is
58 alleged to have occurred or is being caused, then and there
59 to show cause, if any shall exist, why said board should
60 not issue an order regulating such pollution, and any per-
61 sons affected by such pollution may by petition intervene
62 as a party complainant or respondent in any proceeding
63 instituted by or before the board. Such citation may be
64 issued by the board or any member thereof, or its execu-
65 tive secretary, and may be served and returned in the
66 same manner as process in any civil action, or it may be
67 served by sending a copy thereof by registered mail ad-
68 dressed to the person causing, or alleged to be causing,
69 any pollution of any water, at his, their or its usual, or
70 last known, postoffice address. The hearings herein pro-
71 vided may be conducted by the board, any member there-
72 of, or its executive secretary, or any person authorized to
73 take depositions by the laws of this state: *Provided*, That
74 where any such hearing is not conducted by the board,

75 all the testimony shall be reduced to writing as provided
76 by law applicable to the taking of depositions, the cost
77 thereof to be borne by the party presenting the same, and
78 all findings in connection therewith shall be made by the
79 board at a meeting to be called by its chairman not less
80 than thirty days after conclusion of its hearing. Any
81 member of the board or its executive secretary may issue
82 any subpoena, administer oaths and cause the attendance
83 of witnesses, the production of evidence and testimony in
84 any proceeding, subject to the same conditions as are pro-
85 vided by the general statutes for the attendance of wit-
86 nesses and the production of evidence and testimony in
87 civil actions.

Sec. 9. *Pollution Orders; Procedure; Enforcement.*—

2 After a full hearing the board shall make its finding of
3 facts, and if it finds that any person is polluting any of the
4 waters of the state, or that the construction, installation
5 or operation of any new sewer, disposal system or treat-
6 ment works, extensions, modifications or additions to new
7 or existing disposal systems or treatment works, exten-
8 sions, modifications or additions to industrial or com-
9 mercial establishments or the operation thereof, or any
10 new outlet or additional load from any existing outlet
11 would cause a material pollution of the waters of the state,
12 and that the same should be prevented, eliminated, con-
13 trolled or reduced, considering the purposes of this article,
14 the amount and effect of such pollution, the practicality
15 and physical and economic feasibility of eliminating, con-
16 trolling or reducing such pollution, the health and wel-
17 fare of the public and other present and future uses of
18 the waters of the state, it shall make and enter an order
19 directing such person to cease such pollution, or shall
20 make and enter an order denying any permit being sought
21 under the provision of section eight of this article, and
22 such person shall have thirty days after notice of the
23 entry of such final order to notify the board that he will
24 comply therewith or will install, use and operate some
25 practical and reasonably available system or means which
26 will so eliminate, control or reduce such pollution, having
27 regard for the rights and interests of all persons con-

28 cerned, and if such person does not so comply with such
29 order, thereafter the board may cause the enforcement
30 of any order issued by it to cease such pollution and, as
31 well all other orders entered by it in matters subject to
32 its jurisdiction, by application to the circuit court of any
33 county wherein the alleged pollution originated or nat-
34 urally flows or to any judge of such court if the same
35 shall be in vacation, to enjoin any persons from causing
36 or continuing such pollution, which application shall be
37 brought and the proceedings thereon conducted by the
38 attorney general, through his assistant as provided in sec-
39 tion thirteen, article one of this chapter, or by the pros-
40 ecuting attorney of the county wherein such proceedings
41 may be pending, or by special counsel employed by any
42 intervening complainant petitioner. If any person noti-
43 fies the board that he will comply with such final order
44 by installing, using and operating some practical and
45 available system to so eliminate, control or reduce such
46 pollution, and makes application for an extension of time,
47 the board within reasonable limits may grant such ex-
48 tension of time. The person against whom such order
49 shall be issued shall, before proceeding to install any sys-
50 tem or means, submit to the board, for its consideration
51 and approval, a plan or statement describing the system
52 or means which is proposed to be used or operated; if any
53 person shall desire to make any substantial change in any
54 system or means used or operated, such person shall, be-
55 fore making such change, file with the board for its con-
56 sideration and approval a plan or statement describing
57 such proposed change, together with application for the
58 action of the board thereon and in respect thereto. The
59 board shall, in any case, enter an order approving or dis-
60 approving any such system or means proposed to be used
61 or operated, or permit or refuse to permit the proposed
62 change in any system or means adopted, used or operated,
63 and shall make and enter all such orders as the board
64 deems proper and necessary. Any order of the board may,
65 at any time after at least twenty days' notice in writing
66 to any person affected thereby and any intervening pe-
67 titioner, and after a hearing thereon, be modified or re-

68 voked by an order entered by the board and the board
69 shall forthwith cause an attested copy of any order en-
70 tered by it to be served upon all persons affected thereby
71 in the same manner as writs or summons in civil actions
72 may be served, or by sending the same by registered mail
73 to such person, or intervener, at his, their or its usual or
74 last known postoffice address.

Sec. 10. *Compliance with Orders; Finances and Funds;*
2 *Procedures.*—Any person, corporation, municipal corpora-
3 tion, partnership or legal entity, upon whom a final order
4 of the board as herein provided is served, which order
5 shall not have been set aside by a court of competent
6 jurisdiction upon complaint filed as herein provided or
7 upon whom a final order is served as modified to conform
8 with a judgment of such court directing modification,
9 shall, within thirty days after receipt of such order, or
10 after judgment affirming such order is entered, take steps
11 for the acquisition or construction of such plants, ma-
12 chinery or works, or for such repair, alteration or exten-
13 sion of existing plants, machinery or works, as may be
14 necessary for the disposition or treatment of the organic
15 or inorganic matter which is causing or contributing to,
16 or is about to cause or contribute to, a polluted condition
17 of such water or waters, or shall take such other steps as
18 may be necessary to comply with said final order of the
19 board. If the offender be a municipal corporation, the
20 cost of acquisition, construction, repair, alteration or ex-
21 tension of the necessary plant, machinery or works, or
22 taking such other steps as may be necessary to comply
23 with said order, shall be paid out of funds on hand avail-
24 able for such purpose, or out of the general funds of such
25 municipal corporation, not otherwise appropriated; or if
26 there be not sufficient funds on hand or unappropriated,
27 then the necessary funds shall be raised by issuance of
28 bonds, such bond issue to be subject to the approval of
29 the state sinking fund commission and the attorney gen-
30 eral of the state of West Virginia.

31 If the estimated cost of the steps necessary to be taken
32 by such municipal corporation to comply with such final
33 order of the board is such that the bond issue necessary

34 to finance such project would not raise the total outstand-
35 ing bonded indebtedness of such municipal corporation in
36 excess of the constitutional limit imposed upon such in-
37 debtedness by the constitution of this state, then and in
38 that event the necessary bonds may be issued as a direct
39 obligation of such municipal corporation, and retired by a
40 general tax levy to be levied against all property within
41 the limit of such municipal corporation listed and assessed
42 for taxation. If the amount of such bonds necessary to be
43 issued would raise the total outstanding bonded indebted-
44 ness of such municipal corporation above said constitu-
45 tional limitation on such indebtedness, or if such municipal
46 corporation by its governing body shall determine against
47 the issuance of direct obligation bonds, then such municip-
48 al corporation shall issue revenue bonds and provide for
49 the retirement thereof in the same manner and subject
50 to the same conditions as provided for the issuance and
51 retirement of bonds in chapter twenty-five, acts of the
52 Legislature, first extraordinary session, one thousand nine
53 hundred thirty-three: *Provided, however,* That the pro-
54 visions of section six of the above-mentioned act, allowing
55 objections to be filed with the governing body, and pro-
56 viding that a written protest of thirty per cent or more
57 of the owners of real estate shall require a four-fifths vote
58 of the governing body for issuance of said revenue bonds,
59 shall not apply to bond issues proposed by any municipal
60 corporation to comply with the final order issued by the
61 board, under the authority of this article, and such objec-
62 tions or submission of written protest shall not be author-
63 ized, nor shall the same, if had, operate to justify or excuse
64 failure to comply with such final order of the board.

65 The funds made available by the issuance of either
66 direct obligation bonds or revenue bonds, as herein pro-
67 vided, shall constitute a "sanitary fund", and shall be used
68 for no other purpose than for carrying out such order or
69 orders of the board; no public money so raised shall be
70 expended by any municipal corporation for any purpose
71 enumerated in this article, unless such expenditure and
72 the amount thereof has been approved by the board.

Sec. 11. *Municipal Projects; Finances; Law Controlling.*

2 —The construction, acquisition, improvement, equipment,
3 custody, operation, repair and maintenance of any plants,
4 machinery or works by any municipal corporation, in
5 compliance with a final order of the board, as herein pro-
6 vided, other than the financing thereof, and the rights,
7 powers and duties, of such municipal corporation and the
8 respective officers and departments thereof, whether the
9 same shall be financed by the issuance of revenue or direct
10 obligation bonds, shall be governed by the provisions of
11 said chapter twenty-five, acts of the Legislature, first ex-
12 traordinary session, one thousand nine hundred thirty-
13 three.

Sec. 12. *Time of Compliance; Procedures; Penalties.*—

2 It shall be the duty of each individual offender and of each
3 member of a partnership, and of each member of the
4 governing body of a municipal corporation, and of each
5 member of the board of directors or other governing body
6 of a private corporation, association or other legal entity,
7 against whom a final order has been issued, as herein pro-
8 vided, to begin appropriate action or proceedings to com-
9 ply with such order, within thirty days from the receipt
10 thereof, if no action has been commenced in the circuit
11 court of the county where such violation is alleged to
12 exist to set aside or vacate such order, as provided in this
13 article, or, in case such action has been brought, within
14 thirty days from the date of judgment affirming such
15 order, or from the date of the receipt of such order, as
16 modified in conformity with the judgment of such court.
17 Failure of the governing body in the case of a municipal
18 corporation, or of the board of directors or any other gov-
19 erning body of any private corporation, association or
20 other legal entity, to provide for the financing and con-
21 struction of such works as may be necessary to carry out
22 said order by appropriate ordinance or resolution, shall
23 constitute failure to begin appropriate action or proceed-
24 ings to comply with such order, as above provided. Any
25 individual offender, or member of a partnership, or any
26 officer or member of the board of directors of a private
27 corporation, association, or other legal entity, or any
28 mayor, councilman or member of a sanitary board as pro-

29 vided for in said chapter twenty-five, acts of the Legisla-
30 ture, first extraordinary session, one thousand nine hun-
31 dred thirty-three, of any municipal corporation, who fails
32 or refuses to discharge any duty imposed upon him by
33 this article or by such final order of the board, or any duty
34 imposed upon him by reason of any ordinance of the gov-
35 erning body of any municipal corporation, or resolution
36 of the board of directors or other governing body of any
37 private corporation, association or other legal entity, pur-
38 suant to this article or to such final order, shall be deemed
39 guilty of a misdemeanor, and, upon conviction thereof,
40 shall be fined in any sum of not less than twenty-five
41 dollars nor more than one hundred dollars, to which, in
42 the discretion of the court, may be added imprisonment in
43 the county jail for any period not to exceed ninety days.
44 Each day that such failure or refusal to discharge such
45 duties continues, shall be and constitute a separate and
46 additional offense for the purposes of this section.

Sec. 13. *Time Extension; Procedures; Penalties.*—The
2 board shall have the authority, in its discretion, to extend
3 the time fixed in any final order issued by it, within which
4 any offender is ordered to correct or abate a condition of
5 pollution of any water or waters, upon written petition
6 filed with the board not less than thirty days prior to the
7 time fixed in such order, when it shall appear that a good
8 faith effort to comply with said order is being made, and
9 that it shall be impossible for such an offender to complete
10 the project of work undertaken within the time so fixed:
11 *Provided, however,* That when it shall appear from such
12 petition aforesaid that due to wartime or other govern-
13 mental restrictions with respect to labor or material, or
14 both, compliance with any such order would be impossible
15 or place undue burden upon such offender, the board shall
16 then stay the execution of its order until such time as it
17 may satisfactorily appear that such wartime or other re-
18 strictions no longer exist.

19 Any person, corporation, municipal corporation, part-
20 nership, association or other legal entity, who shall fail
21 or refuse to correct or abate such polluted condition in
22 compliance with such order within the time fixed or

23 within the time additionally granted as herein provided,
24 shall be subject to a penalty of one hundred dollars for
25 each day that such polluted condition continues to exist
26 after the time so fixed, or additionally granted, which may
27 be recovered in a civil suit brought in the name of the
28 state of West Virginia and which penalty shall be in
29 addition to the penalty provided in section twelve of this
30 article. It shall be the duty of the attorney general to
31 prosecute all actions for penalties under this section, and
32 all penalties so recovered shall be paid into the state treasury
33 to the credit of the state fund as general revenue. The
34 penalties accruing for any two or more days under the
35 provisions of this section may be recovered in one complaint
36 and may be joined in one paragraph of said
37 complaint.

Sec. 14. *Judicial Review.*—Any party feeling aggrieved
2 by the entry of a final order by the board, affecting him
3 or it, may present a petition in writing to the circuit court
4 of the county wherein the pollution originated or naturally
5 flows, or to the judge of such court in vacation,
6 within thirty days after the entry of such order, praying
7 that such final order may be set aside or modified. The
8 applicant shall deliver a copy of such petition to the secretary
9 of the board before presenting the same to the
10 court or judge. The court or judge shall fix a time for the
11 hearing on the application, but such hearing, unless by
12 agreement by the parties, shall not be held sooner than
13 five days after its presentation; and notice of the time and
14 place of such hearing shall be forthwith delivered to the
15 secretary of the board, so that the board may be represented
16 at such hearing by one or more of its members or
17 by counsel. For such hearing the board shall file with the
18 clerk of said court all papers, documents, evidence and
19 records or certified copies thereof as were before the board
20 at the hearing or investigation resulting in the entry of
21 the order from which the petitioner appeals. The board
22 shall file with the court before the day fixed for the final
23 hearing a written statement of its reasons for the entry
24 of such order, and after arguments by counsel the court
25 shall by order entered of record, affirm, modify or set

26 aside in whole or in part the order of the board. Upon
27 such judicial review, the findings of fact made by the
28 board shall have like weight to that accorded to the find-
29 ings of fact of a trial chancellor or at any equity pro-
30 cedure. The supreme court of appeals of the state shall
31 have jurisdiction to review the order of the circuit court
32 upon application of either party or any intervener. The
33 prosecuting attorney of the county wherein the proceed-
34 ings in the circuit court are had, or the attorney general
35 through his assistant as provided in section thirteen of
36 article one of this chapter, shall represent the board, and
37 the attorney general of the state shall represent it in any
38 proceedings in the supreme court of appeals and any inter-
39 vener may be represented by counsel specially employed.

PART II. SLACK-WATER DAMS

Sec. 15. *Location and Construction of Slack-Water*
2 *Dams.*—The state road commissioner, in constructing pub-
3 lic highways, bridges and culverts, as provided by law, and
4 any municipal corporation constructing or improving pub-
5 lic streets, viaducts, bridges and culverts, either severally
6 or jointly, upon request of the director of the department
7 of natural resources and with the approval of the state
8 road commissioner, may construct and maintain slack-
9 water dams in connection with such public highways,
10 streets, bridges, culverts or viaducts so as to create reser-
11 voirs, ponds, water parks, basins, lakes or other incidental
12 works to conserve the water supply of the state.

Sec. 16. *Dam Construction Initiated; Approval by Pub-*
2 *lic Authority; Costs; Plans.*—The director may request the
3 public authority having charge of the construction of state
4 highways, highway bridges, and culverts or municipal
5 streets, viaducts, bridges and culverts for the construction
6 of slack-water dams in connection with the construction
7 of any such public highway, street, bridge, viaduct or
8 culvert whenever, in his opinion, the construction of such
9 dam is desirable and feasible for the economical creation
10 and construction of reservoirs, ponds, water parks, basins,
11 lakes or other incidental works for the conservation of the
12 water supply of the state.

13 The public authority having charge of such construction
14 may approve such request when, in its opinion, the construction of such dams will not unnecessarily delay or
15 hinder the construction of the public highway, street,
16 bridge, viaduct or culvert, or will not interfere with its
17 value or use for highway purposes.

19 If such request is approved, the director, in cooperation
20 with the state road commissioner and the public authority
21 participating in the project, shall make a survey and prepare plans, specifications and estimates for the construction of such dams, reservoirs, ponds, water parks, basins,
22 lakes or other incidental works in connection therewith.

25 Upon approval of the plans and specifications and determination to proceed with the project, the director shall enter into an agreement with the public authority on the distribution of the cost and expense of the construction of such dams and incidental works in connection therewith.
30 The portion of the cost to be paid by the department shall be paid from any funds appropriated for or paid into the department and available for such purpose. No public
32 authority shall proceed with the construction of such a project unless the plans have complied with the other
33 requirements of law relative to the construction of dams
34 and the director shall have satisfied the public authority
35 that sufficient funds are available for the completion of
36 the dam.

39 Such dams shall be constructed under and subject to
40 any laws governing the construction of state, county or
41 municipal highways, streets, viaducts, bridges or culverts.
42 Any public authority undertaking construction pursuant
43 to this article shall proceed in the same manner as provided for the construction of public highways or street
44 improvements.

46 Nothing herein contained shall require the public authority so concerned to delay or postpone the construction
47 of the principal public improvement, though approval of
48 the combined project may have been given.

Sec. 17. *Requests to Director for Dam Construction;*
2 *Costs; Procedure.*—Any department or division of the

3 state government or any county, municipal corporation,
4 park board or district or any organization, club, corpora-
5 tion, or private person may petition the director for the
6 construction of dams and reservoir projects in connection
7 with the construction of any public highway, bridge, cul-
8 vert, street or viaduct.

9 Upon receipt of such a petition and its approval by the
10 director, the director shall proceed as authorized by sec-
11 tion sixteen of this article. If the public authority having
12 charge of the construction of such public highway, street,
13 bridge, viaduct or culvert approves the request, then the
14 director shall enter into an agreement with the public
15 authority, organization or persons petitioning for the con-
16 struction of such dam or reservoir on the apportionment
17 of the cost and expense of construction. The cost and ex-
18 pense of such dam project shall include the cost of clear-
19 ing and grubbing and the cost of property and damages
20 incidental thereto. Such agreement shall also contain pro-
21 visions for the proper maintenance and repair of such
22 projects after completion, and also apportion the revenue
23 derived therefrom between the department and the pe-
24 titioner.

Sec. 18. *Payment of Dam Costs; Deficiencies and Re-*
2 *funds.*—In all cases in which a public authority, private
3 organization or person shall petition for the construction
4 of a dam and reservoir project as authorized by this arti-
5 cle, the director, as a condition precedent to the construc-
6 tion of such project, shall require the petitioning author-
7 ity, organization or person to pay his share of the cost and
8 expense of such project into the hands of the treasurer of
9 the state to be kept in a separate account for each such
10 project and to be disbursed upon the order of the director.

11 If the estimated cost paid into the state treasury is found
12 to be insufficient, the deficiency shall be made up by the
13 parties bearing the cost before any further work is done.
14 If the deficiency is not made up within sixty days after
15 notice to such parties, the cost paid in, less the amount of
16 expense incurred by the director and the cooperating pub-
17 lic authorities shall be refunded to the donor. After com-
18 pletion of the work, any amount remaining in the state

19 treasury to the credit of the project shall likewise be
20 refunded.

Sec. 19. *Contracts for Dam Construction.*—In the construction of dams, reservoirs and other incidental works pursuant to this article, the state road commissioner or the public authority of a municipality shall proceed as provided by law and shall enter into contracts as provided by law.

Sec. 20. *Dam Supervision, Maintenance and Management.*—The director shall have the supervision, care and control of all dams, reservoirs, ponds, water parks, basins, lakes or other incidental works constructed pursuant to this article and shall maintain and keep them in repair. The cost of such maintenance and repair shall be paid from any funds appropriated to the department for that purpose or paid into the state treasury as agreed upon with the public or contracting authorities cooperating in the construction of such projects.

Such projects may also be maintained by any department or division of state government or other public authorities leasing or operating the projects, through agreements made with said director. All rentals derived from the leases of such projects shall be used by said director in the maintenance or repair of all such projects. The costs and expenses of the reconstruction of any such projects shall be distributed, unless otherwise agreed, on the same basis and pro rata share of the costs and expenses as was paid by the contracting authorities to the cost of the original project: *Provided, however,* That the state road commission shall not be required to contribute any portion of the cost of maintaining or repairing any dam, reservoir, pond, water park, basin, lake, or other incidental work when the maintenance of the road, bridge, or culvert would not have required such expenditure if it were not for the installation of the project or projects by this article contemplated.

Sec. 21. *Titles and Leases to Lands; Management and Funds.*—The title or lease to any such lands, waters or riparian rights shall be taken by the department, subject

4 to the approval of the governor and the attorney general,
5 in the name of the state. The lease rentals or purchase
6 price of any such lands, waters or riparian rights, as well
7 as all costs and expenses of constructing any such reser-
8 voirs, ponds, water parks, basins, lakes or other incidental
9 works on such lands, may be paid for from any funds
10 appropriated for the use of or paid into the department
11 and available for such purpose. The director may accept
12 contributions to such funds from individuals, associations,
13 clubs, organizations and corporations to effectuate the
14 purposes of this article.

Sec. 22. *Future Plans for Road and Other Construction;*
2 *Coordination.*—Upon request by the director, the state
3 road commissioner or other public authority shall furnish
4 such director plans underway or contemplated for the
5 construction of new public highways, bridges, culverts,
6 viaducts, or streets; and, thereupon, it shall become the
7 duty of the director to coordinate the plans of the depart-
8 ment, if any, with the state road commission or other pub-
9 lic authority to the end that such additional project shall
10 not cause a delay in or interfere with the construction of
11 the principal project, and to the end that such additional
12 project shall, in all respects, be in conformity with recog-
13 nized road construction standards and practices.

PART III. HUSBANDRY OF WATER AREAS

Sec. 23. *Water Areas Beautification; Investigations;*
2 *Enforcement.*—The division of water resources shall be
3 responsible for the department's program and practices
4 in the husbandry of rivers, streams, creeks, lakes, ponds,
5 except farm ponds and other water areas and the lands
6 immediately adjacent thereto. The chief of the division
7 shall make such investigations and surveys, conduct such
8 schools and public meetings and take such other steps as
9 may be expedient in the conservation, beautification, im-
10 provement and use of all such water areas of the state. He
11 shall cooperate with the department's chief law enforce-
12 ment officer in enforcing the provisions of law prohibiting
13 disposal of litter in, along and near such water areas.

Sec. 24. *Litter along Streams; Violations; Evidence;*

2 *Penalties.*—It shall be unlawful to place, deposit, dump or
3 throw, or cause to be placed, deposited, dumped or thrown,
4 any litter, garbage, refuse, trash, cans, bottles, papers,
5 ashes, carcass of any dead animal, offal or any other offen-
6 sive or unsightly matter into any river, stream, creek,
7 lake or pond, or upon the surface of any land within one
8 hundred yards thereof or in such location that high water
9 or normal drainage conditions will cause material desig-
10 nated in this section to be washed into any river, stream,
11 creek, lake or pond.

12 No portion of this section shall be construed to restrict
13 a private owner or lessee in the use of his own private
14 property or leased property or to prohibit the disposal of
15 materials designated in this section in any manner author-
16 ized by law. But if any owner, renter or lessee, private or
17 otherwise, knowingly permits such material, heretofore
18 designated in this section, to be deposited, dumped or
19 thrown in such location that high water or normal drain-
20 age conditions will cause such material to wash into any
21 river, stream, creek, lake or pond, it shall be deemed
22 prima-facie evidence that such owner, renter, or lessee in-
23 tended to violate this section. The provisions of this sec-
24 tion shall not apply to persons, firms or corporations
25 subject to the jurisdiction of the state water resources
26 board under provisions of this article.

27 In addition to enforcement by the director, provisions
28 of this section may be enforced by the United States for-
29 estry service and all other proper law enforcement
30 agencies.

31 Any person violating any provision of this section shall
32 be guilty of a misdemeanor and, upon conviction thereof,
33 shall be fined not less than twenty nor more than five
34 hundred dollars, or be imprisoned in the county jail for a
35 period of time not exceeding six months, or, in the discre-
36 tion of the court, may be subject to both such fine and
37 imprisonment.

Article 6. Reclamation.

Section

1. Division of reclamation; duties and functions; state agriculturist, his compensation and duties.

2. Surface mining of coal.
3. Performance bond.
4. Duties of operators; requirements; procedures.
5. Bond forfeitures; procedures; funds and uses.
6. Validity of existing permits and bonds; continuity.
7. When bond released and discharged.
8. Offenses; penalties; prosecutions.

Section 1. *Division of Reclamation; Duties and Functions; State Agriculturist, His Compensation and Duties.*—

The division of reclamation, herein created and established, shall have within its jurisdiction and supervision all lands and areas of the state surfaced mined or susceptible of being surfaced mined for the removal of coal and other minerals and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive, and subject to soil erosion and waste, except land being utilized in the production of agricultural commodities. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the division shall be consistent with other provisions of this chapter, shall be in cooperation with other offices and divisions of the department, and shall not interfere with or encroach upon powers, functions and services lawfully within the jurisdiction of the government of the United States.

The chief of the division shall organize and staff his division for the orderly, efficient and economical execution and administration of the provisions of this article as an integral part of the department's natural resources program.

Upon request of the director of the department of natural resources, the director of the West Virginia agricultural experiment station at West Virginia University shall select and designate a competent and qualified person to be state agriculturist who shall serve in a liaison and advisory capacity between the experiment station and the department in agricultural reclamation programs and projects. The state agriculturist shall be a graduate of an accredited school or college of agriculture, shall have had

36 at least five years' practical experience in agricultural
37 work. The director of the experiment station shall fix the
38 state agriculturist's salary, which shall be paid from uni-
39 versity funds, and shall arrange on the university campus
40 for adequate office facilities, stenographic and clerical
41 assistance, and such other supplies and materials as
42 needed by the state agriculturist. When performing serv-
43 ices for the department of natural resources, his travel
44 expenses shall be paid from department funds. The state
45 agriculturist shall study and develop agricultural recla-
46 mation programs and projects consistent with the pro-
47 visions of this chapter, and, under the supervision and
48 direction of the directors of the experiment station and
49 the department of natural resources, shall plan, effect and
50 prosecute programs, projects and activities for the recla-
51 mation and restoration of lands of the state for agricul-
52 tural uses and purposes.

Sec. 2. *Surface Mining of Coal.*—The terms "surface
2 mining" or "strip mining of coal", as herein used, shall
3 mean the mining of coal by any method from an open cut
4 or open pit from which the overburden or surface ma-
5 terials have been removed or stripped so as to expose the
6 coal in place. The term shall not be construed to include
7 conventional deep mining and auger mining.

8 Surface mining of coal, as an industrial enterprise and
9 occupation, shall be within the jurisdiction and subject to
10 regulations of the state department of mines, as provided
11 in article two-a, chapter twenty-two of this code, but the
12 department of natural resources shall have jurisdiction
13 and control over issuance of all surface mining permits,
14 land and soil aspects of all surface mining operations, and
15 the restoration and reclamation of all lands and areas sur-
16 face mined, partially surface mined, and affected by ad-
17 jacent or nearby surface mining operations.

18 Personnel of the department of mines and of the de-
19 partment of natural resources shall correlate and coordi-
20 nate their respective departmental programs and records
21 so as to effect an orderly and harmonious administration
22 of the provisions of this article.

Sec. 3. *Performance Bond.*—It shall hereafter be unlawful for any person, firm or corporation to engage in the surface mining of coal without having first obtained from the director of the department of mines a permit therefor as provided in section three, article two-a, chapter twenty-two of the code. Before issuance of such permit the director of the department of natural resources shall certify to the director of the department of mines that such applicant for said permit has posted a bond with satisfactory corporate surety, in a penalty of five hundred dollars for each acre or fraction thereof covered by said permit with a minimum of one thousand dollars, conditioned upon the faithful performance of the requirements contained in section four hereof.

Sec. 4. *Duties of Operators; Requirements; Procedures.*
—It shall be the duty of each operator to: (1) Cover the face of the coal and so far as practicable, bury all roof coal and pyritic shales; (2) seal off with an earth fill any break-through to underground workings in the coal; (3) drain all the surface involved in the mining operation and provide such outlets as may be necessary to conduct storm and seepage waters from such surface to a permanent stream or stream bed with as little erosion as possible; (4) remove all metal, lumber and other refuse resulting from the operation; (5) regrade, in a manner approved by the director and the agriculturist, the overburden or other strata removed from the coal so as to refill any ditches, trenches or excavations made in the mining operation, in order to minimize the hazards of floods, pollution of streams and water, accumulation of stagnant water, and the loss of soil for agricultural, forestry or grazing purposes, but any lands upon which stripping operations are conducted, which are not used for agricultural or grazing purposes, and in the opinion of the agriculturist, are not adapted therefor, shall be exempted from the provisions of this requirement by the director in the exercise of his sound discretion; and (6) to plant trees, shrubs, grasses or vines upon the land affected in such a manner so as to establish a satisfactory cover on the land in compliance with rules

27 and regulations approved and adopted by the director or
28 to offer to deposit with the soil conservation district, in
29 which the operation covered by such permit is located, a
30 sufficient amount of money to reclaim the area of the
31 permit, as estimated by the district. If the offer is ac-
32 cepted by the district and the deposit made with the dis-
33 trict, and approved by the director, the district then as-
34 sumes the responsibility for the reclamation work. If the
35 district assumes responsibility for the reclamation work,
36 the director shall release the bonds.

37 If the operator, landowner or coal owner, including
38 the lessee, desires to conduct drift mining upon the prem-
39 ises, he may designate drift locations, and also outside
40 haulage ways along the exposed face of the coal, at which
41 places it will not be necessary to replace the overburden
42 on the haulage way to the coal until such mining is com-
43 pleted.

44 For failure to do all the things required of the operator
45 within one year after the completion of the mining opera-
46 tion on the land covered by the permit, and after receipt
47 of a thirty-day notice in writing from the director, which
48 notice may be sent by registered or certified mail, that
49 any one or more of such things have not been done, the
50 permit covering the particular operation and any other
51 surface mining permits that may have been issued to the
52 operator involved shall be revoked by the director and the
53 performance bond shall be forfeited, unless such operator
54 shall comply with the provisions of this section within
55 said thirty-day period.

56 Any operator whose surface mining permit has been
57 revoked shall not be eligible to receive another such per-
58 mit until he shall have complied with the requirements
59 of all the laws in respect to former permits issued him.

Sec. 5. *Bond Forfeitures; Procedures; Funds and Uses.*

2 —Upon default in the performance of the conditions of
3 the performance bond, the director shall give notice to
4 the attorney general and it shall be his duty to collect the
5 forfeiture without delay.

6 All such forfeitures, heretofore or hereafter collected,

7 as provided in this article, shall be deposited with the
8 state treasurer in a special fund to be designated "Surface
9 Mining Reclamation Fund" to the credit of the department
10 and shall be expended to reclaim and rehabilitate land
11 affected in accordance with the provisions of this article.

12 It shall then be the duty of the director with the knowl-
13 edge and concurrence of the agriculturist to reclaim and
14 rehabilitate land affected in accordance with the pro-
15 visions of section four of this article. Insofar as reasonably
16 practicable, the moneys in the fund shall be expended
17 upon the lands upon which the permit was issued and for
18 which the bond was given. The department may, when
19 deemed necessary, avail itself of any services which may
20 be provided by the state or federal government.

21 The auditor shall issue his warrant for any or all money
22 in the special fund created by this section upon written
23 request of the director. The special fund heretofore desig-
24 nated "Strip Mining Fund" shall be included in and made
25 a part of the "Surface Mining Reclamation Fund" herein
26 provided for.

Sec. 6. *Validity of Existing Permits and Bonds; Con-*
2 *tinuity.*—The provisions of chapter eighty-four, acts of
3 the Legislature of West Virginia, regular session, one
4 thousand nine hundred thirty-nine, shall continue to be
5 in full force and govern in all respects every existing
6 right for surface mining operations, every outstanding
7 permit for surface mining operations and every existing
8 cash or other bond posted in connection therewith, and
9 the enactment of this article shall not affect any offenses
10 or acts committed or done, or any penalty or forfeiture
11 incurred, or any right established, accrued, or accruing
12 before the day this law takes effect. Any money received
13 from the forfeiture of bonds given under the provisions
14 of said act shall be deposited in the same fund and used
15 in the same manner as forfeitures under this article.
16 Every operator under an existing permit, under which
17 actual mining operations have not been commenced prior
18 to the effective date of this article, shall nevertheless be
19 required to perform all the duties specified in section four
20 of this article, and, for failure to do so, his bond shall

21 be forfeited and he shall be subject to all other penalties
22 provided by the above-mentioned former act. Every such
23 operator shall be required to comply with the provisions
24 of section four of this article under which actual mining
25 operations have not been commenced prior to the effective
26 date of this article.

Sec. 7. *When Bond Released and Discharged.*—Upon
2 satisfactory completion of all requirements of law under
3 the permit granted to any operator pursuant to the pro-
4 visions hereof, the director of the department of natural
5 resources shall issue to the operator a certificate releasing
6 and discharging the bond and surety thereon.

Sec. 8. *Offenses; Penalties; Prosecutions.*—Any oper-
2 ator, or surface owner or owners, or owner or owners of
3 surface rights who shall conduct any surface mining oper-
4 ation or any part thereof without a permit, or who shall
5 carry on such operation or be a party thereto on land not
6 covered by a permit, shall be guilty of a misdemeanor,
7 and, upon conviction thereof, shall be fined not exceeding
8 one thousand dollars or be imprisoned in the county jail
9 for a period not exceeding twelve months, or in the dis-
10 cretion of the court be subject to both such fine and im-
11 prisonment, for each such offense. It shall be the duty of
12 the director to see that prosecutions are instituted for vio-
13 lations of the provisions hereof.

Article 7. Law Enforcement, Procedures and Penalties.

Section

1. Chief conservation officer, duties; conservation officers; special conservation officers.
2. Conservation officer qualifications; oath; uniforms.
3. Powers and duties of other law officers.
4. Powers and duties of conservation officer.
5. Enforcement processes.
6. Prosecutions; attorney services; costs.
7. Conspiracy to violate natural resources laws; withholding information; obstructing officers.
8. Property used for illegal purposes; seizure and disposition.
9. Offenses generally; penalties.
10. Justice of peace jurisdiction.

Section 1. *Chief Conservation Officer, Duties; Conservation Officers; Special Conservation Officers.*—The depart-

3 ment's law enforcement policies, practices and program
4 shall be under the immediate supervision and direction
5 of the department law enforcement officer selected by the
6 director and designated as chief conservation officer as
7 provided in article one hereof.

8 Under the supervision of the director, the chief con-
9 servation officer shall organize, develop and maintain law
10 enforcement practices, means and methods geared, timed
11 and adjustable to seasonal, emergency and other needs
12 and requirements of the department's comprehensive
13 natural resources program. All department personnel
14 detailed and assigned to law enforcement duties and
15 services hereunder shall be known and designated as
16 conservation officers and shall be under the immediate
17 supervision and direction of the chief conservation officer.
18 All such conservation officers shall be trained, equipped
19 and conditioned for duty and services wherever and when-
20 ever required by department law enforcement needs.

21 The chief conservation officer, acting under supervision
22 of the director, is authorized to select and appoint special
23 conservation officers for limited or extended periods of
24 time for effective enforcement of the provisions of this
25 chapter when considered necessary because of seasonal,
26 emergency or other unusual circumstances. The special
27 conservation officers shall be selected from qualified merit
28 system personnel and shall otherwise comply with other
29 requirements and qualifications of conservation officers,
30 except in emergency situations and circumstances when
31 the director may designate such officers, without regard
32 to such requirements and qualifications, to meet imme-
33 diate law enforcement needs.

34 The term "conservation officer", as used in this chapter,
35 shall mean and include personnel which may be desig-
36 nated and described in other provisions of this code as
37 game protectors, game wardens, fire wardens and by other
38 like or similar names.

39 Conservation officers shall be subject to seasonal or
40 other assignment and detail to duty whenever and wher-
41 ever required by the functions, services and needs of the
42 department.

Sec. 2. *Conservation Officers; Qualifications; Oath; Uniforms.*—In addition to merit system qualifications and requirements, persons selected as conservation officers shall have reached their twenty-first birthday and shall not have reached their forty-fifth birthday at the time of appointment, be of height between five feet nine inches and six feet six inches, with weight proportioned to height, in good physical condition and of good moral character. Each person so selected shall be certified by the judge of the circuit court, the sheriff and the prosecuting attorney of the county in which he resides to be a person of good moral character, temperate in habits and without criminal record. Whenever possible and practicable, preference in selection of conservation officers shall be given honorably discharged United States military personnel. Each conservation officer, before entering upon the discharge of his duties, shall take and subscribe to the oath of office prescribed in article four, section five of the constitution of West Virginia, which executed oath shall be filed with the director.

The director shall prescribe the kind, style and material of uniforms to be worn by conservation officers. Uniforms and other equipment furnished to the conservation officers shall be and remain the property of the state.

Sec. 3. *Powers and Duties of Other Law Officers.*—The sheriffs and constables of the several counties of the state, police officers of any city and members of the department of public safety shall be vested, within their respective jurisdictions, with all of the powers and authority of conservation officers without requirement of any additional oath or bond. Immediately upon making any arrest or executing any process under provisions of this chapter, each such officer shall report thereon to the director.

Sec. 4. *Powers and Duties of Conservation Officer.*—Conservation officers and all other persons authorized to enforce the provisions of this chapter shall be under the supervision and direction of the director in the performance of their duties as herein provided. The authority, powers and duties of the conservation officers shall be state-wide and they shall have authority to:

8 (1) Arrest on sight, without warrant or other court
9 process, any person or persons detected by them in the
10 violation of any of the provisions of this chapter, but no
11 such arrests shall be made where any form of adminis-
12 trative procedure is prescribed by this chapter for the
13 enforcement of any of the particular provisions contained
14 herein;

15 (2) Carry such arms and weapons as may be pre-
16 scribed by the director in the course and performance of
17 their duties, upon giving the bond required by provisions
18 of section five, article seven, chapter sixty-one of this
19 code, but no license or other authorization shall be re-
20 quired of such officers for this privilege;

21 (3) Search and examine, in manner provided by law,
22 any boat, vehicle, automobile, conveyance, express or rail-
23 road car, fish box, fish bucket or creel, game bag or game
24 coat, or any other place in which hunting and fishing
25 paraphernalia, wild animals, wild birds, fish, amphibians
26 or other forms of aquatic life could be concealed, packed
27 or conveyed whenever they have reason to believe that
28 they would thereby secure or discover evidence of the
29 violation of any provision of this chapter;

30 (4) Execute and serve any search warrant, notice or
31 any process of law issued under the authority of this
32 chapter or any law relating to wildlife, forests, and all
33 other natural resources, by a justice of the peace, any
34 court having jurisdiction thereof, or the water resources
35 board, in the same manner, with the same authority, and
36 with the same legal effect, as any constable or sheriff can
37 serve or execute such warrant, notice or process;

38 (5) Require the operator of any motor vehicle or other
39 conveyance, on or about the public highways or roadways,
40 or in or near the fields and streams of this state, to stop
41 for the purpose of allowing such officers to conduct game-
42 kill surveys;

43 (6) Summon aid in making arrests, seizures or exe-
44 cuting any warrants, notices or processes, and shall have
45 the same rights and powers as sheriffs have in their re-
46 spective counties in so doing;

47 (7) Enter private lands or waters within the state
48 while engaged in the performance of their official duties
49 hereunder: *Provided, however,* That in connection with
50 all surveys, examinations, investigations and studies
51 needed in the gathering of facts concerning water re-
52 sources and their use or pollution thereof under article
53 five of this chapter, such conservation officers and all
54 other persons authorized to enforce the provisions of this
55 chapter, shall act pursuant to and under the direction of
56 the state water resources board, and such officers and
57 other persons shall be subject to the provisions of sub-
58 section four, section five, article five of this chapter; and
59 (8) Do all things necessary to carry into effect the
60 provisions of this chapter.

Sec. 5. *Enforcement Processes.*—The director shall be
2 charged with the duty and responsibility of enforcing the
3 provisions of this chapter and to this end may call upon
4 the attorney general, the prosecuting attorneys of the sev-
5 eral counties, the department of public safety and all
6 other law enforcement officers of the state. He shall have
7 authority to compel compliance with and to prevent vio-
8 lations and threatened violations of any provisions of this
9 chapter, lawful rules and regulations promulgated here-
10 under, and cease and desist orders issued pursuant hereto.
11 He may invoke the processes of any court for coercive,
12 remedial or preventive relief by injunction, mandamus
13 or other appropriate proceedings.

Sec. 6. *Prosecutions; Attorney Services; Costs.*—The di-
2 rector may cause complaints to be made and proceedings
3 to be instituted and prosecuted against any violators of
4 this chapter, without the sanction of the prosecuting at-
5 torney of the county wherein such proceedings are in-
6 stituted, and in all such cases no security for costs shall
7 be required of the director. In any unusual or emergency
8 situation or case wherein a prosecuting attorney or the
9 attorney general may not be available to the director for
10 legal services, the director may employ another attorney
11 or other attorneys to represent the state in prosecutions
12 and proceedings under provisions of this chapter and shall

13 pay costs and fees for such services from department
14 funds.

Sec. 7. *Conspiracy to Violate Natural Resources Laws; Withholding Information; Obstructing Officers.*—Any person who shields or conspires with another in the commission of a violation of any of the provisions of this chapter, or who, upon inquiry, withholds information from enforcement officers, or who hinders, obstructs, interferes with, or impersonates, or attempts to hinder, obstruct, interfere with or impersonate an officer in the performance of his duties shall be guilty of a misdemeanor.

Sec. 8. *Property Used for Illegal Purposes; Seizure and Disposition.*—Any officer, when he arrests or otherwise takes a person into custody for violating any provision or provisions of this chapter, is hereby also authorized and empowered to take and impound any property found in the possession of the accused and susceptible of use in committing the offense of which the person is accused. Such property shall include firearms, fishing equipment, traps, boats, dogs, or any other device, appliance or conveyance.

If the accused is acquitted the property seized shall be returned. If the accused is convicted and pays the fine, costs and other penalties, the property shall be returned, but if the accused fails to pay the fine and costs, the property shall be sold at public auction in such manner as the director may prescribe. The proceeds of the sale shall be applied toward the payment of the fine and costs. The remainder, if any, shall be paid to the owner of the seized property.

Whenever a person is convicted of a violation of this chapter a second time, the property seized at the time of arrest shall in any case be declared forfeited to the state and shall be sold in the manner provided by this section.

Property seized, the use of which is forbidden by this chapter, or which is unfit or unsafe for further use, shall be declared forfeited to the state and shall be disposed of by the director.

Sec. 9. *Offenses Generally; Penalties.*—Any person violating any of the provisions of this chapter, or rules and regulations promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than twenty nor more than three hundred dollars, or confined in jail not less than ten nor more than one hundred days, or be both fined and imprisoned within the limitations aforesaid; and, in the case of a violation by a corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided.

Sec. 10. *Justice of Peace Jurisdiction.*—Justices of the peace and all other courts established in lieu thereof or in supplementation thereto shall have jurisdiction of all misdemeanor offenses arising under provisions of this chapter concurrent with the jurisdiction of circuit and other criminal courts.

Article 8. General and Miscellaneous Provisions.

Section

1. Transition in terms; continuity.
2. Transfer of records, appropriations, facilities and other properties and assets.
3. Construction.
4. Effective date.

Section 1. *Transition in Terms; Continuity.*—Wherever in this code and elsewhere in law the terms "The Conservation Commission of West Virginia", "conservation commission", "director of conservation" and similar and related terms are used and referenced, they shall be read, understood and construed in the light of the enactment of this chapter by which the conservation commission and the office of director of conservation are abolished and the responsibilities, functions and services thereof are transferred to and absorbed in the department of natural resources, the natural resources commission and the office of director of the department of natural resources as in this chapter provided.

14 Wherever in this code and elsewhere in law the terms
15 “state water commission” and “state water resources com-
16 mission” are used and referenced, they shall be read, un-
17 derstood and construed to mean and refer to the state
18 water resources board established and continued in this
19 chapter as an activity of the department of natural re-
20 sources.

21 Any litigation instituted, entered into or pending to
22 which any of the governmental corporations and agencies
23 abolished by this chapter are named parties may be con-
24 tinued and prosecuted to completion in such party names
25 or, at the option of the litigants and by leave of court,
26 such party names may be amended or changed to corre-
27 spond with the names of the successor governmental cor-
28 porations and agencies as in this chapter provided.

29 All contracts, compacts and agreements, heretofore en-
30 tered into by any of the governmental corporations and
31 agencies hereby abolished, shall continue to be the obli-
32 gations of the respective successor corporations and agen-
33 cies as in this chapter provided. No provision of this
34 chapter shall be construed as impairing the obligation of
35 any contract.

 Sec. 2. *Transfer of Records, Appropriations, Facilities
2 and Other Properties and Assets.*—As of the effective date
3 of this chapter, the records, funds, unexpended appropri-
4 ations, facilities, equipment and real and personal prop-
5 erties and assets of every kind and character belonging
6 to, owned by or in the custody and control of any govern-
7 mental corporation, agency, office or activity abolished or
8 transferred to and absorbed in the department of natural
9 resources by the provisions of this chapter shall be by
10 each such governmental corporation, agency, office or
11 activity transferred and delivered to the department of
12 natural resources or to the identifiable successor to the
13 abolished corporation, agency, office or activity as in this
14 chapter established and constituted. It is the intent and
15 purpose of the provisions of this section that continuity
16 in the governmental operations, functions and services
17 affected by this transition shall not be interrupted or
18 impeded.

Sec. 3. *Construction.*—The provisions of this chapter shall be liberally construed to effect the objects and purposes hereof. The provisions of the chapter shall be construed to be separable and severable and in the event any clause, sentence or provision hereof shall for any reason be construed or held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect or impair the remaining provisions hereof.

Sec. 4. *Effective Date.*—The provisions of this chapter shall become effective on the first day of July, one thousand nine hundred sixty-one.

CHAPTER 134

(Com. Sub. for House Bill No. 330—Originating in the House Committee on the Judiciary)

[Passed March 9, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-d, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state fire marshal and city officials within certain municipalities.

Article 3. State Fire Marshal; Protection against Fire.

Section

4-d. Powers of fire marshal and city officials within certain municipalities.

Be it enacted by the Legislature of West Virginia:

That section four-d, article three, 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:

Section 4-d. *Powers of Fire Marshal and City Officials within Certain Municipalities.*—The powers herein granted in sections four-a, four-b and four-c may also be exercised, except as to public and private school buildings,

5 including colleges and universities, public and private
6 hospitals and nursing homes, and buildings owned or op-
7 erated by or for the state of West Virginia or any division
8 or agency thereof or public corporation performing any
9 function of the state other than municipalities, within
10 any municipality which has adopted, or which shall here-
11 after upon the request of the fire marshal adopt, ordi-
12 nances by which the fire chief or other appropriate muni-
13 cipal officer is given substantially the same powers con-
14 tained in said sections four-a, four-b and four-c, by the
15 appropriate municipal officer or officers; but the powers
16 granted the state fire marshal by sections four-a, four-b
17 and four-c shall continue to be exercised exclusively by
18 the state fire marshal within each such municipality with
19 respect to public and private school buildings, including
20 colleges and universities, public and private hospitals and
21 nursing homes, and buildings owned or operated by or
22 for the state of West Virginia or any division or agency
23 thereof or public corporation performing any function
24 of the state other than municipalities, located within each
25 such municipality: *Provided, however,* That the inspec-
26 tions of the foregoing excepted buildings authorized to be
27 made by section four-a and any regulations adopted pur-
28 suant thereto, and by section sixteen may be made by the
29 appropriate officials or officers of any fire department of
30 any city which has adopted or which shall hereafter, upon
31 the request of the fire marshal, adopt ordinances by which
32 the fire chief or other appropriate municipal officer is
33 given substantially the same power as contained in sec-
34 tions four-a, four-b and four-c. Any fire hazard found
35 within any excepted building by any municipal fire de-
36 partment shall be reported by it to the state fire marshal.

CHAPTER 135

(Com. Sub. for House Bill No. 115—Originating in
the House Committee on the Judiciary)

[Passed March 6, 1961; in effect July 1, 1961. 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 eleven, relating to the creation and establishment of the West Virginia human rights commission and providing for its personnel, powers, functions and services.

Article 11. Human Rights Commission.

Section

1. Created; status, powers and objects generally; "Commission" defined.
2. Composition; appointment, terms and oath of members; expenses.
3. Organization and personnel; offices; meetings; quorum; minutes; expenses of personnel.
4. Powers; functions; services.
5. Assistance to commission; legal services.
6. Construction; separable provisions.

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 eleven, to read as follows:

Section 1. *Created; Status, Powers and Objects Generally; "Commission" Defined.*—A West Virginia human rights commission is hereby created and established in the state government. The commission shall have the powers and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodation by virtue of race, creed or religious belief. Unless the context clearly requires another meaning or reference, the word "commission" as used in this article shall be construed to mean and to refer to the West Virginia human rights commission.

Sec. 2. *Composition; Appointment, Terms and Oath of Members; Expenses.*—The commission shall be composed of nine members, all residents and citizens of the state of

4 West Virginia and broadly representative of the several
5 racial, religious* and ethnic groups residing within the
6 state, to be appointed by the governor by and with the ad-
7 vice and consent of the senate. Not more than five mem-
8 bers of the commission shall be members of the same polit-
9 ical party and at least one member but not more than three
10 members shall be from any one congressional district.

11 Members of the commission shall be appointed for
12 terms of three years commencing on the first day of July
13 of the year of their appointments, except that the nine
14 members first appointed hereunder shall be appointed for
15 terms of from one to three years, respectively, so that the
16 terms of three members of the commission will expire
17 on the thirtieth day of June of each succeeding year there-
18 after. Upon the expiration of the initial terms, all sub-
19 sequent appointments shall be for terms of three years
20 each, except that appointments to fill vacancies shall be
21 for the unexpired term thereof. Members shall be eligible
22 for reappointment. Before assuming and performing any
23 duties as a member of the commission, each commission
24 member shall take and subscribe to the official oath pre-
25 scribed by section five of article four of the constitution
26 of West Virginia, which executed oath shall be filed in
27 the office of the secretary of state.

28 No member of the commission shall receive any salary
29 or compensation for his services as such, but each mem-
30 ber shall be reimbursed for his reasonable and necessary
31 travel expenses incurred in performance of his commis-
32 sion services.

Sec. 3. *Organization and Personnel; Offices; Meetings;*
2 *Quorum; Minutes; Expenses of Personnel.*—As soon as
3 practical after the first day of July following creation of
4 the commission, the governor shall call a meeting thereof
5 to be convened at the state capitol. The commission shall
6 at the meeting organize by electing one of its members as
7 chairman of the commission and one as vice chairman
8 thereof for a term of one year or until their successors are
9 elected and qualified. Annually thereafter, as soon as
10 practical after the first day of July, the commission shall
11 elect a chairman and vice chairman from its member-

12 ship and such other officers as may be found necessary and
13 proper for its effective organization.

14 When organized, the commission shall select an execu-
15 tive director who shall serve at the will and pleasure of
16 the commission. The executive director shall serve as
17 secretary of the commission. The executive director shall
18 have a college degree. He shall be selected with particular
19 reference to his training, experience and qualifications for
20 the position and shall be paid an annual salary, payable in
21 monthly installments, from any appropriations made
22 therefor. The commission, upon recommendation of the
23 executive director, may employ, prescribe the duties for,
24 and fix the salaries and compensation within available
25 appropriations, of such personnel as may be necessary for
26 the effective and orderly performance of the functions and
27 services of the commission.

28 The commission shall equip and maintain its offices at
29 the state capitol and shall hold its annual organizational
30 meeting thereat. The commission may hold other meet-
31 ings during the year at such times and places within the
32 state as may be found necessary and proper in the dis-
33 charge of its duties. Any five members of the commission
34 shall constitute a quorum for the transaction of business.
35 Minutes of its meetings shall be kept by its secretary.

36 The executive director and other commission personnel
37 shall be reimbursed for necessary and reasonable travel
38 and subsistence expenses incurred in performance of com-
39 mission services upon presentation of properly verified
40 expense accounts as prescribed by law.

Sec. 4. *Powers; Functions; Services.*—The commission
2 is hereby authorized and empowered:

3 (a) To cooperate and work with federal, state and local
4 government officers, units, activities and agencies in the
5 promotion and attainment of more harmonious under-
6 standing and greater equality of rights between and among
7 all racial, religious and ethnic groups in this state;

8 (b) To enlist the cooperation of racial, religious and
9 ethnic units, community and civic organizations, indus-
10 trial and labor organizations and other identifiable groups
11 of the state in programs and campaigns devoted to the

12 advancement of tolerance, understanding and the equal
13 protection of the laws for all groups and peoples;

14 (c) To act as conciliator in matters of employment and
15 places of public accommodation involving race, color, re-
16 ligion, national origin or ancestry, but no decision of the
17 commission shall be binding upon any parties to the con-
18 ciliation;

19 (d) To receive and consider complaints involving em-
20 ployment and places of public accommodation and to
21 initiate its own consideration of any situations, circum-
22 stances or problems, including therein any racial, religious
23 or ethnic group tensions, prejudice, disorder or discrimi-
24 nation reported or existing within the state relating to
25 employment and places of public accommodation;

26 (e) To hold and conduct public and private hearings
27 on complaints, matters and questions before the commis-
28 sion and, in connection therewith, to

29 (1) Administer oaths, take the testimony of any per-
30 son under oath, and make reimbursement for travel and
31 other reasonable and necessary expenses in connection
32 with such attendance;

33 (2) Compile hearing records and furnish copies of the
34 whole or any parts thereof to the governor, the Legisla-
35 ture and such other governmental officials and agencies
36 as may be concerned therewith;

37 (3) Furnish copies of public hearing records to inter-
38 ested parties involved therein upon their payment of the
39 reasonable costs thereof to the commission;

40 (4) Delegate to the executive director, or to any
41 five members of the commission the power and au-
42 thority to hold and conduct the hearings, as herein
43 provided, but all decisions and action growing out of or
44 upon any such hearings shall be reserved for determina-
45 tion by the commission;

46 (f) To encourage, promote and conduct studies and
47 research projects in matters and questions involving and
48 relating to human rights and to compile and make public
49 reports thereon;

50 (g) To recommend to the governor and Legislature
51 policies, procedures, practices and legislation in matters
52 and questions affecting human rights;

53 (h) To delegate to its executive director and to such
54 other investigative and research personnel as it may em-
55 ploy such powers, duties and functions as may be neces-
56 sary and expedient in carrying out the objectives and
57 purposes of this article;

58 (i) To prepare a written report on its work, functions
59 and services for each year ending on the thirtieth day of
60 June and to deliver copies thereof to the governor on or
61 before the first day of December next thereafter;

62 (j) To do all other acts and deeds necessary and proper
63 to carry out and accomplish effectively the objects, func-
64 tions and services contemplated by the provisions of this
65 article, including the promulgation of rules and regula-
66 tions implementing the powers and authority hereby vest-
67 ed in the commission;

68 (k) Notwithstanding any other provisions of this ar-
69 ticle, any person called as a witness before the commis-
70 sion may, in that person's discretion, demand either a
71 public or private hearing.

Sec. 5. *Assistance to Commission; Legal Services.*—The
2 commission may call upon other officers, departments
3 and agencies of the state government to assist in its hear-
4 ings, programs and projects. The attorney general of the
5 state shall render legal services to the commission upon
6 request made by the commission or by the chairman or
7 the executive director thereof.

Sec. 6. *Construction; Separable Provisions.*—The pro-
2 visions of this article shall be liberally construed to ac-
3 complish the objectives and purposes hereof. If any pro-
4 vision of this article be held invalid or unconstitutional
5 by any court of competent jurisdiction, such invalidity
6 or unconstitutionality shall not affect or invalidate the
7 other provisions hereof, all of which are declared and
8 shall be construed to be separate and separable.

CHAPTER 136

(Com. Sub. for Senate Bill No. 146—Originating in the
Senate Committee on the Judiciary)

[Passed March 4, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to repeal article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article, designated article one-c, relating to the "Interstate Commission on the Potomac River Basin", and the revision of the interstate compact on the Potomac river basin.

Article I-c. Interstate Commission on the Potomac River Basin.

Section

1. Creation of commission; members; terms; compact with other political units.
2. Appointment of alternates.
3. Expenses of commission; appropriation; officers and employees; meetings.
4. Effective date.
5. Restrictions.

Be it enacted by the Legislature of West Virginia:

That article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article one-c be enacted in lieu thereof, to read as follows:

- Section 1. *Creation of Commission; Members; Terms;*
- 2 *Compact with Other Political Units.*—There is hereby
 - 3 created a commission consisting of three members, to
 - 4 act jointly with commissioners appointed for like purposes
 - 5 by the commonwealths of Pennsylvania and Virginia, the
 - 6 state of Maryland, and the District of Columbia, and an
 - 7 additional three members to be appointed by the president
 - 8 of the United States, and which, together with the other
 - 9 commissioners appointed as hereinbefore mentioned,
 - 10 shall constitute and be known as the "Interstate Commis-

11 sion on the Potomac River Basin". The said commission
12 of the state of West Virginia shall consist of three mem-
13 bers. The governor, by and with the advice and consent
14 of the senate, shall appoint two persons as two of such
15 commissioners, each of whom shall be a resident and
16 citizen of this state. The terms of one of the said two
17 commissioners first appointed shall be three years and of
18 the other shall be six years; and their successors shall be
19 appointed by the governor, by and with the advice and
20 consent of the senate, for terms of six years each. Each
21 commissioner shall hold office until his successor shall be
22 appointed and qualified. Vacancies occurring in the of-
23 fice of any such commissioner for any reason or cause
24 shall be filled by appointment by the governor, by and
25 with the advice and consent of the senate, for the unex-
26 pired term. The third commissioner from this state shall
27 be the commissioner of health ex officio, and the term
28 of any such ex officio commissioner shall terminate at the
29 time he ceases to hold said office of commissioner of
30 health, and his successor as a commissioner shall be his
31 successor as said commissioner of health. Said ex officio
32 commissioner may delegate, from time to time, to any
33 deputy or other subordinate in his department or office,
34 the power to be present and participate, including voting,
35 as his representative or substitute at any meeting of or
36 hearing by or other proceeding of the commission. The
37 term of each of the initial three members shall begin at
38 the date of the appointment of the two appointive com-
39 missioners: *Provided*, That the compact hereinafter refer-
40 red to shall then have gone into effect, in accordance with
41 article six thereof, otherwise to begin upon the date
42 said compact shall become effective, in accordance with
43 said article six.

44 Any commissioner may be removed from office by the
45 governor.

46 The governor of the state of West Virginia is hereby
47 authorized and directed to execute a compact on behalf
48 of the state of West Virginia, with the other states and
49 the district hereinabove referred to, who may by their
50 legislative bodies so authorize a compact in form sub-
51 stantially as follows:

52

A COMPACT

53 WHEREAS, It is recognized that abatement of existing
54 pollution and the control of future pollution of interstate
55 streams can best be promoted through a joint agency
56 representing the several states located wholly or in part
57 within the area drained by any such interstate streams;
58 and

59 WHEREAS, The Congress of the United States has given
60 its consent to the states of Maryland and West Virginia,
61 the commonwealths of Pennsylvania and Virginia, and
62 the District of Columbia to enter into a compact providing
63 for the creation of a conservancy district to consist of the
64 drainage basin of the Potomac river and the main and
65 tributary streams therein, for "the purpose of regulating,
66 controlling, preventing, or otherwise rendering unobjec-
67 tionable and harmless the pollution of the waters of said
68 Potomac drainage area by sewage and industrial and
69 other wastes"; and

70 WHEREAS, The regulation, control and prevention of
71 pollution is directly affected by the quantities of water
72 in said streams and the uses to which such water may be
73 put, thereby requiring integration and coordination of the
74 planning for the development and use of the water and
75 associated land resources through cooperation with, and
76 support and coordination of, the activities of federal, state,
77 local and private agencies, groups, and interests con-
78 cerned with the development, utilization and conservation
79 of the water and associated land resources of the said
80 conservancy district; now, therefore,

81 The states of Maryland and West Virginia, the com-
82 monweatlhs of Pennsylvania and Virginia, and the Dis-
83 trict of Columbia, hereinafter designated signatory bodies,
84 do hereby create the Potomac valley conservancy dis-
85 trict, hereinafter designated the conservancy district,
86 comprising all of the area drained by the Potomac river
87 and its tributaries; and also, do hereby create, as an
88 agency of each signatory body, the interstate commission
89 on the Potomac river basin, hereinafter designated the
90 commission, under the articles of organization as set forth
91 below.

92

ARTICLE I

93 The interstate commission on the Potomac river basin
94 shall consist of three members from each signatory body
95 and three members appointed by the president of the
96 United States. Said commissioners, other than those ap-
97 pointed by the president, shall be chosen in a manner and
98 for the terms provided by law of the signatory body from
99 which they are appointed, and shall serve without com-
100 pensation from the commission but shall be paid by the
101 commission their actual expenses incurred and incident
102 to the performance of their duties.

103 (A) The commission shall meet and organize within
104 thirty days after the effective date of this compact, shall
105 elect from its number a chairman and vice chairman, shall
106 adopt suitable by-laws, shall make, adopt and promulgate
107 such rules and regulations as are necessary for its man-
108 agement and control, and shall adopt a seal.

109 (B) The commission shall appoint, and at its pleasure,
110 remove or discharge such officers and legal, engineering,
111 clerical, expert and other assistants as may be required
112 to carry the provisions of this compact into effect, and
113 shall determine their qualifications and fix their duties
114 and compensation. Such personnel as may be employed
115 shall be employed without regard to any civil service or
116 other similar requirements for employees of any of the
117 signatory bodies. The commission may maintain one or
118 more offices for the transaction of its business and may
119 meet at any time within the area of the signatory bodies.

120 (C) The commission shall keep accurate accounts of
121 all receipts and disbursements and shall make an annual
122 report thereof and shall in such report set forth in detail
123 the operations and transactions conducted by it pursuant
124 to this compact. The commission, however, shall not
125 incur any obligations for administrative or other expenses
126 prior to the making of appropriations adequate to meet
127 the same nor shall it in any way pledge the credit of any
128 of the signatory bodies. Each of the signatory bodies
129 reserves the right to make at any time an examination
130 and audit of the accounts of the commission.

131 (D) A quorum of the commission shall, for the trans-
132 action of business, the exercise of any powers, or the

133 performance of any duties, consist of at least six members
134 of the commission who shall represent at least a majority
135 of the signatory bodies: *Provided, however,* That no
136 action of the commission relating to policy or stream
137 classification or standards shall be binding on any one of
138 the signatory bodies unless at least two of the commis-
139 sioners from such signatory body shall vote in favor
140 thereof.

141

ARTICLE II

142 The commission shall have the power:

143 (A) To collect, analyze, interpret, coordinate, tabu-
144 late, summarize and distribute technical and other data
145 relative to, and to conduct studies, sponsor research and
146 prepare reports on, pollution and other water problems
147 of the conservancy district.

148 (B) To cooperate with the legislative and adminis-
149 trative agencies of the signatory bodies, or the equivalent
150 thereof, and with other commissions and federal, local
151 governmental and nongovernmental agencies, organiza-
152 tions, groups and persons for the purpose of promoting
153 uniform laws, rules or regulations for the abatement and
154 control of pollution of streams and the utilization, con-
155 servation and development of the water and associated
156 land resources in the said conservancy district.

157 (C) To disseminate to the public information in rela-
158 tion to stream pollution problems and the utilization,
159 conservation and development of the water and associated
160 land resources of the conservancy district and on the
161 aims, views, purposes and recommendations of the com-
162 mission in relation thereto.

163 (D) To cooperate with, assist, and provide liaison for
164 and among, public and nonpublic agencies and organiza-
165 tions concerned with pollution and other water problems
166 in the formulation and coordination of plans, programs
167 and other activities relating to stream pollution or to the
168 utilization, conservation or development of water or asso-
169 ciated land resources, and to sponsor cooperative action
170 in connection with the foregoing.

171 (E) In its discretion and at any time during or after
172 the formulation thereof, to review and to comment upon

173 any plan or program of any public or private agency or
174 organization relating to stream pollution or the utilization,
175 conservation or development of water or associated land
176 resources.

177 (F) (1). To make, and, if needful from time to time,
178 revise and to recommend to the signatory bodies, reason-
179 able minimum standards for the treatment of sewage and
180 industrial or other wastes now discharged or to be dis-
181 charged in the future to the streams of the conservancy
182 district, and also, for cleanliness of the various streams in
183 the conservancy district.

184 (2). To establish reasonable physical, chemical and
185 bacteriological standards of water quality satisfactory
186 for various classifications of use. It is agreed that each
187 of the signatory bodies through appropriate agencies will
188 prepare a classification of its interstate waters in the
189 district in entirety or by portions according to present
190 and proposed highest use, and for this purpose technical
191 experts employed by appropriate state water pollution
192 control agencies are authorized to confer on questions
193 relating to classification of interstate waters affecting two
194 or more states. Each signatory body agrees to submit its
195 classification of its interstate waters to the commission
196 with its recommendations thereon.

197 The commission shall review such classification and
198 recommendations and accept or return the same with its
199 comments. In the event of return, the signatory body
200 will consider the comments of the commission and re-
201 submit the classification proposal, with or without amend-
202 ment, with any additional comments for further action
203 by the commission.

204 It is agreed that after acceptance of such classification,
205 the signatory body through its appropriate state water
206 pollution control agencies will work to establish programs
207 of treatment of sewage and industrial wastes which will
208 meet or exceed standards established by the commission
209 for classified waters. The commission may from time
210 to time make such changes in definitions of classifications
211 and in standards as may be required by changed condi-
212 tions or as may be necessary for uniformity and in a

213 manner similar to that in which these standards and
214 classifications were originally established.

215 It is recognized, owing to such variable factors as loca-
216 tion, size, character and flow and the many varied uses of
217 the waters subject to the terms of this compact, that no
218 single standard of sewage and waste treatment and no
219 single standard of quality of receiving waters is practical
220 and that the degree of treatment of sewage and industrial
221 wastes should take into account the classification of the
222 receiving waters according to present and proposed
223 highest use, such as for drinking water supply, bathing
224 and other recreational purposes, maintenance and propa-
225 gation of fish life, industrial and agricultural uses, navi-
226 gation and disposal of wastes.

227 ARTICLE III

228 For the purpose of dealing with the problems of pollu-
229 tion and of water and associated land resources in specific
230 areas which directly affect two or more, but not all,
231 signatory bodies, the commission may establish sections
232 of the commission consisting of the commissioners from
233 such affected signatory bodies: *Provided, however,* That
234 no signatory body may be excluded from any section in
235 which it wishes to participate. The commissioners ap-
236 pointed by the president of the United States may par-
237 ticipate in any section. The commission shall designate,
238 and from time to time may change, the geographical area
239 with respect to which each section shall function. Each
240 section shall, to such extent as the commission may from
241 time to time authorize, have authority to exercise and
242 perform with respect to its designated geographical area
243 any power or function vested in the commission, and in
244 addition may exercise such other powers and perform
245 such functions as may be vested in such section by the
246 laws of any signatory body or by the laws of the United
247 States. The exercise or performance by a section of any
248 power or function vested in the commission may be
249 financed by the commission, but the exercise or per-
250 formance of powers or functions vested solely in a section
251 shall be financed through funds provided in advance by
252 the bodies, including the United States, participating in
253 such section.

254

ARTICLE IV

255 The moneys necessary to finance the commission in the
256 administration of its business in the conservancy district
257 shall be provided through appropriations from the signa-
258 tory bodies and the United States, in the manner pre-
259 scribed by the laws of the several signatory bodies and
260 of the United States, and in amounts as follows:

261 The pro rata contribution shall be based on such factors
262 as population; the amount of industrial and domestic
263 pollution; and a flat service charge; as shall be determined
264 from time to time by the commission, subject, however,
265 to the approval, ratification and appropriation of such
266 contribution by the several signatory bodies.

267

ARTICLE V

268 Pursuant to the aims and purposes of this compact, the
269 signatory bodies mutually agree:

270 1. Faithful cooperation in the abatement of existing
271 pollution and the prevention of future pollution in the
272 streams of the conservancy district and in planning for
273 the utilization, conservation and development of the
274 water and associated land resources thereof.

275 2. The enactment of adequate and, insofar as is prac-
276 ticable, uniform legislation for the abatement and control
277 of pollution and control and use of such streams.

278 3. The appropriation of biennial sums on the propor-
279 tionate basis as set forth in article four.

280

ARTICLE VI

281 This compact shall become effective immediately after
282 it shall have been ratified by the majority of the legis-
283 latures of the states of Maryland and West Virginia, the
284 commonwealths of Pennsylvania and Virginia, and by
285 the commissioners of the District of Columbia, and ap-
286 proval by the Congress of the United States: *Provided,*
287 *however,* That this compact shall not be effective as to
288 any signatory body until ratified thereby.

289

ARTICLE VII

290 Any signatory body may, by legislative action, after
291 one year's notice to the commission, withdraw from this
292 compact.

Sec. 2. *Appointment of Alternates.*—The governor, by
2 and with the consent of the senate, shall appoint an
3 alternate member for the two members of the commission
4 who are not ex officio, and each alternate shall have power
5 to act in the absence of the person for whom he is alter-
6 nate. The governor shall appoint the first alternates
7 hereunder on or before July first, one thousand nine
8 hundred forty-nine, the term of each alternate to run
9 concurrently with the term of the member for whom
10 he is alternate.

Sec. 3. *Expenses of Commission; Appropriation; Offi-
2 cers and Employees; Meetings.*—The commissioners shall
3 be reimbursed, out of moneys appropriated for such pur-
4 poses, all sums which they necessarily shall expend in the
5 discharge of their duties as members of such commission.

6 There shall be appropriated to the commission out of
7 any moneys in the state treasury unexpended and avail-
8 able therefor, and not otherwise appropriated, such sums
9 as may be necessary for the uses and purposes of the com-
10 mission in carrying out the provisions of this article and
11 the payment of the proper proportion of the state of West
12 Virginia of the expenses of the "Interstate Commission on
13 the Potomac River Basin", in accordance with article four
14 of said compact.

15 The commission shall elect from its membership a chair-
16 man and may also select a secretary who need not be a
17 member. The commission may employ such assistants as
18 it may deem necessarily required, and the duties of such
19 assistants shall be prescribed and their compensation
20 fixed by the commission and paid out of the state treasury
21 out of funds appropriated for such purposes upon the
22 requisition of said commission.

23 The commission shall meet at such times and places as
24 agreed upon by the commissioners or upon call of its
25 chairman.

Sec. 4. *Effective Date.*—This article shall become effec-
2 tive upon the adoption of substantially similar amend-
3 ments to the interstate compact by each of the signatory
4 states to the compact, and upon the approval of the

5 amendments to the compact by the Congress of the United
6 States.

Sec. 5. *Restrictions.*—Neither the governor of the state
2 of West Virginia nor any member of the commission afore-
3 said, representing the state of West Virginia, shall consent
4 to the construction of any dam, whether in the state of
5 West Virginia, or without this state, which shall flood
6 lands in this state, without the express consent of the
7 Legislature.

CHAPTER 137

(Senate Bill No. 13—By Mr. Carson, Mr. President)

[Passed March 9, 1961; 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 eight, relating to records management and preservation of essential records.

Article 8. Public Records Management and Preservation Act.

Section

1. Short title.
2. Declaration of policy.
3. Definitions.
4. Categories of records to be preserved.
5. State records administrator.
6. Records management and preservation advisory committee.
7. Duties of administrator.
8. Rules and regulations.
9. Duties of agency heads.
10. Essential state records; preservation duplicates.
11. Essential state records; safekeeping.
12. Essential state records; maintenance; inspection and use.
13. Essential state records; confidential records.
14. Essential state records; review of program.
15. Records management and preservation of local records.
16. Assistance to legislative and judicial branches.
17. Disposal of records.
18. Destruction of non-record materials.
19. Annual report.
20. Separability clause.

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 eight, to read as follows:

Section 1. *Short Title.*—This article shall be known as
2 the “Records Management and Preservation of Essential
3 Records Act.”

Sec. 2. *Declaration of Policy.*—The Legislature declares
2 that programs for the efficient and economical manage-
3 ment of state and local records will promote economy and
4 efficiency in the day-to-day record-keeping activities of
5 state and local government and will facilitate and expedite
6 government operations; that records containing informa-
7 tion essential to the operation of government and to the
8 protection of the rights and interests of persons must be
9 protected against the destructive effects of all forms of
10 disaster and must be available when needed. It is neces-
11 sary, therefore, to adopt special provisions for the selec-
12 tion and preservation of essential state and local records
13 thereby providing for the protection and availability of
14 such information.

Sec. 3. *Definitions.*—As used in this article:

2 (a) “Disaster” means any occurrence of fire, flood,
3 storm, earthquake, explosion, epidemic, riot, sabotage or
4 other condition of extreme peril resulting in substantial
5 damage or injury to persons or property within this state,
6 whether such occurrence is caused by an act of God,
7 nature or man, including an enemy of the United States.
8 (b) “Records” means document, book, paper, photo-
9 graph, sound recording or other material, regardless of
10 physical form or characteristics, made or received pur-
11 suant to law or ordinance or in connection with the trans-
12 action of official business. Library and museum material
13 made or acquired and preserved solely for reference or
14 exhibition purposes, extra copies of documents preserved
15 only for convenience of reference, and stocks of publica-

16 tions and of processed documents are not included within
17 the definition of records as used in this article.

18 (c) "State record" means:

19 (1) A record of a department, office, commission, board
20 or other agency, however designated, of the state govern-
21 ment.

22 (2) A record of the state Legislature.

23 (3) A record of any court of record, whether of state-
24 wide or local jurisdiction.

25 (4) Any record designated or treated as a state record
26 under state law.

27 (d) "Local record" means a record of a county, city,
28 town, authority or any public corporation or political
29 entity whether organized and existing under charter or
30 under general law unless the record is designated or
31 treated as a state record under state law.

32 (e) "Agency" means any department, office, commis-
33 sion, board or other unit, however designated, of the exec-
34 utive branch of state government.

35 (f) "Preservation duplicate" means a copy of an essen-
36 tial state record which is used for the purpose of preserv-
37 ing such state record pursuant to this article.

Sec. 4. *Categories of Records to Be Preserved.*—State or
2 local records which are within the following categories
3 are essential records which shall be preserved pursuant to
4 this article:

5 Category A. Records containing information necessary
6 to the operation of government in the emergency created
7 by a disaster.

8 Category B. Records not within category A but con-
9 taining information necessary to protect the rights and
10 interest of persons or to establish and affirm the powers
11 and duties of governments in the resumption of operations
12 after a disaster.

Sec. 5. *State Records Administrator.*—The commission-
2 er of finance and administration is hereby designated the
3 state records administrator, hereinafter called the admin-
4 istrator. The administrator shall establish and administer

5 in the executive branch of state government a records
6 management program, which will apply efficient and eco-
7 nomical management methods to the creation, utilization,
8 maintenance and retention, preservation and disposal of
9 state records; and shall establish and maintain a program
10 for the selection and preservation of essential state rec-
11 ords and shall advise and assist in the establishment of
12 programs for the selection and preservation of essential
13 local records.

Sec. 6. *Records Management and Preservation Advisory*
2 *Committee.*—A records management and preservation
3 advisory committee is hereby established to advise the
4 administrator and to perform such other duties as this ar-
5 ticle requires. The records management and preservation
6 advisory committee shall be composed of the following
7 members: The governor, auditor, attorney general, presi-
8 dent of the senate, speaker of the house of delegates, the
9 president of the supreme court of appeals, a judge of a
10 circuit court to be appointed by the governor, the state di-
11 rector of civil and defense mobilization, or their respective
12 designated representatives. The advisory committee shall
13 designate one of its members to be chairman, and it shall
14 adopt rules for the conduct of its business. The advisory
15 committee shall meet whenever called by its chairman or
16 the administrator. The members of the advisory com-
17 mittee shall serve without compensation but shall be re-
18 imbursed for their actual expenses incurred while per-
19 forming their duties as members of the advisory com-
20 mittee.

Sec. 7. *Duties of Administrator.*—The administrator
2 shall, with due regard for the functions of the agencies
3 concerned:
4 (a) Establish standards, procedures, and techniques for
5 effective management of records.
6 (b) Make continuing surveys of paper work operations
7 and recommend improvements in current records man-
8 agement practices including the use of space, equipment
9 and supplies employed in creating, maintaining, storing
10 and servicing records.

11 (c) Establish standards for the preparation of schedules
12 providing for the retention of state records of continuing
13 value and for the prompt and orderly disposal of state
14 records no longer possessing sufficient administrative, le-
15 gal, or fiscal value to warrant their further keeping.

16 (d) Select the state records which are essential and
17 determine their category pursuant to this article. In ac-
18 cordance with the rules and regulations promulgated by
19 the administrator, each person who has custody or control
20 of state records shall (1) inventory the state records in
21 his custody or control; (2) submit to the administrator a
22 report thereon containing such information as the admin-
23 istrator directs and containing his recommendations as to
24 which state records are essential; and (3) periodically
25 review his inventory and his report and, if necessary, re-
26 vise his report so that it is current, accurate and complete.

27 (e) Obtain reports from agencies as are required for
28 the administration of the program.

Sec. 8. *Rules and Regulations.*—The administrator shall
2 promulgate such rules and regulations concerning the
3 management and selection and preservation of essential
4 state records as are necessary or proper to effectuate the
5 purpose of this article.

Sec. 9. *Duties of Agency Heads.*—The head of each
2 agency shall:

3 (a) Establish and maintain an active, continuing pro-
4 gram for the economical and efficient management of the
5 records of the agency.

6 (b) Make and maintain records containing adequate
7 and proper documentation of the organization, functions,
8 policies, decisions, procedures and essential transactions of
9 the agency designed to furnish information to protect the
10 legal and financial rights of the state and of persons di-
11 rectly affected by the agency's activities.

12 (c) Submit to the administrator, in accordance with
13 the standards established by him, schedules proposing the
14 length of time each state record series warrants retention
15 for administrative, legal or fiscal purposes after it has been
16 received by the agency. The head of each agency also

17 shall submit lists of state records in his custody that are
18 not needed in the transaction of current business and that
19 do not have sufficient administrative, legal or fiscal value
20 to warrant their further keeping for disposal in conformity
21 with the requirements of section ten of this article.

22 (d) Cooperate with the administrator in the conduct
23 of surveys made by him pursuant to the provisions of
24 this article.

25 (e) Comply with the rules, regulations, standards and
26 procedures issued by the administrator.

Sec. 10. *Essential State Records; Preservation Duplicates.*—(a) The administrator may make or cause to be
2 made preservation duplicates or may designate as preservation
3 duplicates existing copies of essential state records.
4 A preservation duplicate shall be durable, accurate, complete
5 and clear, and a preservation duplicate made by
6 means of photography, microphotography, photocopying,
7 film or microfilm shall be made in conformity with the
8 standards prescribed therefor by the administrator.
9

10 (b) A preservation duplicate made by a photographic,
11 photostatic, microfilm, micro-card, miniature photographic,
12 or other process which accurately reproduces or forms a
13 durable medium for so reproducing the original, shall
14 have the same force and effect for all purposes as the original
15 record whether the original record is in existence or
16 not. A transcript, exemplification or certified copy of such
17 preservation duplicate shall be deemed for all purposes
18 to be a transcript, exemplification or certified copy of the
19 original record.

Sec. 11. *Essential State Records; Safekeeping.*—(a) The
2 administrator shall prescribe the place and manner of
3 safekeeping of essential state records and preservation
4 duplicates and may establish, with the approval of the
5 Legislature, storage facilities therefor. The administrator
6 may provide for storage outside the state.

7 (b) When in the opinion of the administrator the legally
8 designated or customary location of an essential
9 state record is such that the essential state record may be

10 destroyed or unavailable in the event of a disaster caused
11 by an enemy of the United States:

12 (1) The administrator shall store a preservation dupli-
13 cate at another location and permit such state record to
14 remain at its legally designated or customary location; or

15 (2) The administrator shall store such state record at
16 a location other than its legally designated or customary
17 location and deposit at the legally designated or custom-
18 ary location a preservation duplicate for use in lieu of the
19 state record; or

20 (3) The administrator may store such state record at a
21 location other than its legally designated or customary
22 location, without providing for a preservation duplicate,
23 upon a determination that it is impracticable to provide
24 for a preservation duplicate and that the state record is
25 not frequently used. Such determination shall be made
26 by the administrator and the regularly designated cus-
27 todian of such state record, but if they disagree the de-
28 termination shall be made by the administrator.

29 (c) The requirements of subsection (b) of this section
30 shall not prohibit the administrator from removing an es-
31 sential state record or preservation duplicate from the
32 legally designated or customary location of the state rec-
33 ord if a disaster caused by an enemy of the United States
34 has occurred or is imminent.

Sec. 12. *Essential State Records; Maintenance, Inspec-*
2 *tion and Use.*—(a) The administrator shall properly
3 maintain essential state records and preservation dupli-
4 cates stored by him.

5 (b) An essential state record or preservation duplicate
6 stored by the administrator may be recalled by the reg-
7 ularly designated custodian of the state record for tem-
8 porary use when necessary for the proper conduct of his
9 office and shall be returned by such custodian to the ad-
10 ministrator immediately after such use.

11 (c) When an essential state record is stored by the ad-
12 ministrator, the administrator, upon request of the reg-
13 ularly designated custodian of the state record, shall pro-
14 vide for its inspection, or for the making or certification

15 of copies thereof, and such copies when certified by the
16 administrator shall have the same force and effect as if
17 certified by the regularly designated custodian.

Sec. 13. *Essential State Records; Confidential Records.*

2 —When a state record is required by law to be treated in
3 a confidential manner and is an essential state record, the
4 administrator in effectuating the purpose of this article
5 with respect to such state record, shall protect its confi-
6 dential nature.

Sec. 14. *Essential State Records; Review of Program.—*

2 The administrator shall review periodically but at least
3 once a year the program for the selection and preservation
4 of essential state records, including the classification of
5 records and the provisions for preservation duplicates, and
6 for safekeeping of essential state records or preservation
7 duplicates to ensure that the purposes of this article are
8 accomplished.

Sec. 15. *Records Management and Preservation of Local Records.—*

2 The governing body of each county, city,
3 town, authority or any public corporation or political en-
4 tity, whether organized and existing under a charter or
5 under general law, shall promote the principles of efficient
6 records management and preservation of local records.
7 Such governing body may, as far as practical, follow the
8 program established for the management and preserva-
9 tion of state records. The administrator shall, upon the
10 request of a local governing body, provide advice and as-
11 sistance in the establishment of a local records manage-
12 ment and preservation program.

Sec. 16. *Assistance to Legislative and Judicial Branches.*

2 —Upon request, the records administrator shall assist and
3 advise in the establishment of records management pro-
4 grams in the legislative and judicial branches of state
5 government and shall, as required by them, provide pro-
6 gram services similar to those available to the executive
7 branch of state government pursuant to the provisions of
8 this article.

Sec. 17. *Disposal of Records.—*No record shall be de-

2 stroyed or otherwise disposed of by any agency of the

3 state, unless it is determined by the administrator that
4 the record has no further administrative, legal, fiscal, re-
5 search or historical value.

Sec. 18. *Destruction of Nonrecord Materials.*—Non-
2 record materials or materials not included within the defi-
3 nition of records as contained in this article may, if not
4 otherwise prohibited by law, be destroyed at any time by
5 the agency in possession of such materials without the
6 prior approval of the administrator. The administrator
7 may formulate procedures and interpretations to guide in
8 the disposal of nonrecord materials.

Sec. 19. *Annual Report.*—The administrator shall make
2 an annual written report to the governor for transmission
3 to the Legislature. The report shall describe the status
4 and progress of programs established pursuant to this ar-
5 ticle and shall include the recommendations of the ad-
6 ministrator for improvements in the management and
7 preservation of records in the state government.

Sec. 20. *Separability Clause.*—If a part of this article is
2 invalid, all valid parts that are separable from the invalid
3 part remain in effect. If a part of this article is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are separable from the in-
6 valid applications.

CHAPTER 138

(Senate Bill No. 268—By Mr. Nuckols)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, chapter one hun-
dred seventy-five, acts of the Legislature of West Virginia,
regular session, one thousand nine hundred fifty-nine, re-
lating to creation of the "West Virginia Centennial Fund".

West Virginia Centennial Commission

Section

2. Creation of the West Virginia centennial fund.

Be it enacted by the Legislature of West Virginia:

That section three, chapter one hundred seventy-five, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-nine, be amended and reenacted to read as follows:

Section 3. *Creation of the West Virginia Centennial*

2 *Fund.*—For the purpose of carrying out the provisions of
3 this act, there is hereby created a special revenue fund
4 entitled “The West Virginia Centennial Fund”, which
5 fund shall remain in existence only to the end of the fiscal
6 year, one thousand nine hundred sixty-four.

7 The commission shall have the duty of administering,
8 managing and controlling said fund and shall make ex-
9 penditures therefrom in accordance with the provisions
10 of article three, chapter twelve of the code of West Vir-
11 ginia, one thousand nine hundred thirty-one, as amended.
12 Requisitions for expenditures from said fund shall be
13 signed by either the chairman or vice chairman of the
14 commission, secretary, treasurer or comptroller. All such
15 requisitions shall require the signature of two such of-
16 ficers.

17 The commission is authorized to receive annual appro-
18 priations from the Legislature of West Virginia and from
19 counties and municipalities within the state, which are
20 hereby authorized and empowered to make appropriations
21 as a budget expenditure, and is empowered to allow such
22 annual appropriations to accumulate until such time as
23 it becomes necessary to make expenditures therefrom.
24 The commission is further authorized and empowered to
25 solicit, encourage and request tax-deductible donations,
26 gifts and contributions from any source, both private and
27 public.

28 All money so appropriated or received shall be turned
29 over to the nonprofit corporation authorized herein.

CHAPTER 139

(Senate Bill No. 40—By Mr. Carson, Mr. President)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to the promotion and expansion of industrial development in the state of West Virginia and the creation of a public corporation to be known as the "West Virginia Industrial Development Authority" to allocate funds for and make secured loans to industrial development agencies for the payment of a part of the cost of industrial development projects in the state of West Virginia; authorizing the authority to enter into agreement with the government of the United States or any federal agency or industrial development agency; empowering the authority to take title to sell, convey and lease industrial development projects where necessary to protect loans made by the West Virginia industrial development authority on industrial development projects; providing for the establishment of industrial development projects in the state of West Virginia; providing that no debt of the state, its municipalities and political subdivisions shall be incurred in the exercise of any powers granted by this article; and providing for the examination of the accounts and affairs of the authority; and the authorization for appropriations for the establishment of an industrial development fund.

Article 15. West Virginia Industrial Development Authority.

Section

1. Short title.
2. Legislative findings.
3. Purposes.
4. Definitions.
5. The West Virginia industrial development authority created; composition of board of members; appointment and term of members; compensation.
6. Powers of authority.
7. Loans.

8. Loan application requirements; hearings upon applications.
9. Industrial development fund.
10. Governing body; organization and meetings; quorum; additional powers of authority.
11. Moneys of the authority; deposits; payments.
12. Conflict of interest.
13. Limitation of powers.
14. Audit.
15. Severability and construction.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Short Title.*—This article shall be known and may be cited as the “West Virginia Industrial Development Authority Act”.

Sec. 2. *Legislative Findings.*—It is hereby determined and declared as a matter of legislative finding: (a) That critical conditions of unemployment exist in many areas of the state and that such conditions may well come about, from time to time, in other areas of the state; (b) that in some areas of the state such conditions are chronic and have been so for so long a period of time that, without remedial measures, they may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all unemployed workers and ultimately upon the state in the form of public assistance and unemployment compensation; (e) that the absence of employment and business opportunities for the youth of such areas is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; (f) that lack of employment and business opportunities in such areas has resulted in thousands of workers and their families leaving the state to find such opportunities, and that this exodus has adversely affected the tax base of counties and municipalities within such areas

26 resulting in an impairment of their financial ability to
27 support education and other local government services;
28 (g) that security against unemployment and the resulting
29 spread of indigency and economic stagnation in affected
30 areas can best be provided by the promotion, attraction,
31 stimulation, rehabilitation and revitalization of commerce,
32 industry and manufacturing in such areas; (h) that the
33 present and future health, safety, morals, right to gainful
34 employment and general welfare of the people of the state
35 require as a public purpose the promotion and develop-
36 ment of new and expanded industrial and manufacturing
37 enterprises within areas of critical unemployment; (i)
38 that the device under which private community industrial
39 development organizations in the state acquire or build
40 industrial buildings with funds raised through popular
41 subscription, loans, or otherwise for lease and sale to new
42 or expanding industries has proven effective in creating
43 new employment and business opportunities locally, is in
44 accord with the American tradition of community initia-
45 tive and enterprise, and requires and deserves encourage-
46 ment and support from the state, as a means toward
47 alleviation of unemployment and chronic economic dis-
48 tress; (j) that community industrial development cor-
49 porations in the state have invested substantial funds in
50 successful industrial development projects and are ex-
51 perienicing difficulty in undertaking additional projects
52 by reason of the partial inadequacy of their own funds
53 potentially available from local subscription sources and
54 by reason of limitations of local financial institutions in
55 providing additional and sufficiently sizeable first deed of
56 trust or mortgage loans; (k) that an urgent need exists
57 to stimulate a larger flow of private investment funds
58 from banks, investment houses, insurance companies and
59 other financial institutions into such community indus-
60 trial building programs in areas of chronic and critical
61 distress; and (l) that by increasing the number of com-
62 munity industrial building projects presenting attractive
63 opportunities for private investment in such areas, a
64 larger portion of the private capital available in this state
65 for investment can be put to use in the general economic
66 development of the state.

Sec. 3. *Purposes.*—The purposes of this article shall be to provide for the formation of a public industrial development authority to promote, assist, encourage and, in conjunction with such banking corporations or institutions, trust companies, savings banks, building and loan associations, insurance companies, or related corporations, partnerships, foundations, or other institutions to develop and advance the business prosperity and economic welfare of the state of West Virginia; to encourage and assist in the location of new business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial or manufacturing developments in this state; to furnish money and credit to approved industrial development agencies in this state, thereby establishing a source of credit not otherwise available therefor. Such purposes are hereby declared to be public purposes for which public money may be spent and are purposes which will promote the health, safety, morals, right to gainful employment, business opportunities and general welfare of the inhabitants of the state.

Sec. 4. *Definitions.*—The following terms, whenever used or referred to in this article, shall have the following meanings:

- (a) The term "authority" shall mean the public corporation created by this article.
- (b) The term "board" shall mean the governing body of the authority.
- (c) The term "county" shall mean any county of this state.
- (d) The term "critical economic area" shall mean the area encompassing any municipality or group of municipalities, county, group of counties or region of the state reasonably defined by the authority wherein critical con-

14 ditions of unemployment, economic depression, wide-
15 spread reliance on public assistance and unemployment
16 compensation are found to exist by the authority. Prior
17 to determination and designation of any area of the state
18 as a critical economic area, the authority shall conduct
19 such investigations of the area and of the records and
20 statistical indices of the department of employment se-
21 curity, department of labor, conservation commission, de-
22 partment of public assistance and other applicable state
23 agencies, as well as the declarations and statistics of any
24 federal agencies as shall be necessary to establish the
25 existence of the above conditions in such area and to es-
26 tablish that an average of not less than six per cent of the
27 labor force of such area has been unemployed for a period
28 of not less than three years, or an average of not less than
29 nine per cent of the labor force of such area has been un-
30 employed for a period of not less than eighteen months,
31 immediately prior to the date of such investigations and
32 findings. No area of the state shall be designated a critical
33 economic area without such investigations and findings
34 having been first made and certified to the permanent
35 records of the authority.

36 (e) The term "federal agency" shall mean and include
37 the United States of America, the president of the United
38 States of America, and any department of, or corporation,
39 agency or instrumentality heretofore or hereafter created,
40 designated or established by, the United States of America.

41 (f) The term "government" shall mean the state and
42 federal governments, or any political subdivision, agency
43 or instrumentality, corporate or otherwise, of either of
44 them.

45 (g) The term "industrial development agency" shall
46 mean any incorporated organization, foundation, associa-
47 tion or agency, regardless of the particular name, and to
48 whose members or shareholders no profit shall inure,
49 which shall have as its primary function the promotion,
50 encouragement and development of industrial and manu-
51 facturing enterprises in a critical economic area.

52 (h) The term "industrial development fund" shall
53 mean the account created by section nine of this article.

54 (i) The term "industrial development project" shall
55 mean any site, structure, facility or undertaking compris-
56 ing or being connected with or being a part of an indus-
57 trial or manufacturing enterprise established or to be es-
58 tablished by an industrial development agency in a critical
59 economic area.

60 (j) The term "municipality" shall mean any city or
61 town of the state.

62 (k) The term "responsible buyer" shall mean any per-
63 son, partnership, firm, company or corporation organized
64 for profit deemed by the authority, after proper investi-
65 gation, to be financially responsible to assume all obliga-
66 tions prescribed by the authority in the acquisition of an
67 industrial development project from an industrial devel-
68 opment agency, and in the operation of an industrial or
69 manufacturing enterprise therein or thereon.

70 (l) The term "responsible tenant" shall mean any per-
71 son, partnership, firm, company or corporation organized
72 for profit deemed by the authority, after proper investi-
73 gation, to be financially responsible to assume all rental
74 and all other obligations prescribed by the authority in
75 the leasing of an industrial development project and in
76 the operation of an industrial or manufacturing enter-
77 prise therein or thereon.

78 (m) The words "cost of establishing an industrial de-
79 velopment project" shall embrace any or all of the follow-
80 ing: The cost of construction, the cost of all lands, prop-
81 erty rights, easements and franchises acquired which are
82 deemed necessary for such construction, financing charges,
83 interest prior to and during construction, cost of engineer-
84 ing and legal expense, plans, specifications, surveys, esti-
85 mates of costs and other expenses necessary or incident
86 to determining the feasibility or practicability of any in-
87 dustrial development project, together with such other
88 expenses as may be necessary or incidental to the financ-
89 ing and the construction of the industrial development
90 project and the placing of the same in operation; the cost
91 of all machinery and equipment and its installation and
92 maintenance shall not be included in the cost of establish-
93 ing an industrial development project, but shall be pro-
94 vided by the responsible buyer.

Sec. 5. *West Virginia Industrial Development Authority*

2 *Created; Composition of Board of Members; Appointment*
3 *and Term of Members; Compensation.*—There is hereby
4 created a body corporate and politic, constituting a public
5 corporation and government instrumentality by the name
6 of the "West Virginia Industrial Development Authority",
7 the board of members of which shall be composed of the
8 following: The commissioner of commerce, who shall
9 serve as chairman, the state tax commissioner, the state
10 banking commissioner and the director of the conserva-
11 tion commission, and their respective successors in office,
12 and five additional members who shall be appointed by
13 the governor, with the advice and consent of the senate,
14 who shall represent the general public and the public
15 interest. The members of the authority initially appointed
16 by the governor shall continue in office for terms of one
17 to five years, respectively, from the date of their appoint-
18 ment and until their respective successors shall be duly
19 appointed and qualified the term of each appointed mem-
20 ber to be designated by the governor at the time of his
21 appointment; but their successors shall each be appointed
22 for a term of five years, except that any person appointed
23 to fill a vacancy shall serve only for the unexpired term,
24 and any appointed member of the authority shall be
25 eligible for reappointment. Said members of the authority
26 shall be entitled to no compensation for their services as
27 members, but shall be entitled to reimbursement for all
28 necessary expenses incurred in connection with the per-
29 formance of their duties as members.

Sec. 6. *Powers of Authority.*—The authority, as a pub-
2 lic corporation and governmental instrumentality exer-
3 cising public powers of the state, is hereby granted and
4 shall have and may exercise all powers necessary or ap-
5 propriate to carry out and effectuate the purposes of this
6 article, including the following powers, in addition to
7 others herein granted:

8 (a) To make determination and designation of critical
9 economic areas.

10 (b) To cooperate with industrial development agencies
11 in their efforts to promote the expansion of industrial and
12 manufacturing activity in critical economic areas.

13 (c) To determine, upon proper application of indus-
14 trial development agencies, whether the declared public
15 purpose of this article has been accomplished or will be ac-
16 complished by the establishment by such industrial de-
17 velopment agencies of an industrial development project
18 in a critical economic area.

19 (d) To conduct examinations and investigations and to
20 hear testimony and take proof, under oath or affirmation,
21 at public or private hearings, on any matter material for
22 its information and necessary to the determination and
23 designation of critical economic areas and the establish-
24 ment of industrial development projects therein.

25 (e) To issue subpoenas requiring the attendance of
26 witnesses and the production of books and papers perti-
27 nent to any hearing before such authority, or before one or
28 more members of the authority appointed by it to con-
29 duct such hearings.

30 (f) To apply to any court, having territorial jurisdic-
31 tion of the offense, to have punished for contempt any
32 witness who refuses to obey a subpoena, or who refuses
33 to be sworn or affirmed or to testify, or who is guilty of
34 any contempt after summons to appear.

35 (g) To authorize any member or members of such au-
36 thority to conduct hearings and to administer oaths, take
37 affidavits and issue subpoenas.

38 (h) To make, upon proper application of industrial de-
39 velopment agencies, loans to such industrial development
40 agencies of moneys held in the industrial development
41 fund for industrial development projects in critical eco-
42 nomic areas and to provide for the repayment and rede-
43 posit of such allocations and loans in the manner herein-
44 after provided.

45 (i) To have existence for a term of fifty years.

46 (j) To sue and be sued, implead and be impleaded,
47 complain and defend in all courts.

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

49 (l) To make by-laws for the management and regula-
50 tion of its affairs.

51 (m) To appoint officers, agents, employees and servants.

52 (n) To make contracts of every name and nature and

53 to execute all instruments necessary or convenient for
54 carrying on its business.

55 (o) Without limitation of the foregoing, accept grants
56 from and enter into contracts or other transactions with
57 any federal agency.

58 (p) To take title by foreclosure to any industrial devel-
59 opment project where such acquisition is necessary to
60 protect any loan previously made therefor by the au-
61 thority and to sell, transfer and convey any such industrial
62 development project to any responsible buyer; in the
63 event such sale, transfer and conveyance cannot be ef-
64 fected with reasonable promptness, the authority may,
65 in order to minimize financial losses and sustain employ-
66 ment, lease such industrial development project to a re-
67 sponsible tenant or tenants; the authority shall not lease
68 industrial development projects except under the condi-
69 tions and for the purposes cited in this section: *Provided,*
70 *however,* That the authority shall have no power at any
71 time to borrow money or in any manner to pledge the
72 credit or taxing power of the state or any of its munici-
73 palities or political subdivisions, nor shall any of its obli-
74 gations be deemed to be obligations of the state or any
75 of its political subdivisions.

Sec. 7. *Loans.*—Loans to industrial development agen-
2 cies: When it has been determined by the authority upon
3 application of an industrial development agency and upon
4 hearing thereon in the manner hereinafter provided that
5 the establishment of a particular industrial development
6 project (of such industrial development agency) in a
7 critical economic area has accomplished or will accom-
8 plish the public purposes of this article, the authority may
9 contract to loan such industrial development agency an
10 amount not in excess of thirty per cent of the cost, or esti-
11 mated cost, of such industrial development project, as
12 established or to be established, subject, however, to the
13 following conditions:

14 (A) Industrial development projects to be established.

15 1. The authority shall have first determined that the
16 industrial development agency holds funds in an amount
17 equal to, or property of a value equal to, not less than

18 twenty per cent of the estimated cost of establishing the
19 industrial development project, which funds or property
20 are available for and shall be applied to the establishment
21 of such project; and

22 2. The authority shall have also determined that the
23 industrial development agency has obtained from other
24 independent and responsible sources, such as banks and
25 insurance companies or otherwise, a firm commitment for
26 all other funds, over and above the loan of the authority
27 and such funds or property as the industrial development
28 agency may hold, necessary for payment of all the esti-
29 mated cost of establishing the industrial development
30 project, and that the sum of all these funds together with
31 machinery and equipment to be provided by the responsi-
32 ble tenant or responsible buyer is adequate to insure com-
33 pletion and operation of the plant or facility.

34 (B) Industrial development projects established with
35 initial authority loan participation.

36 1. The authority shall have first determined that the
37 industrial development agency has expended funds in an
38 amount equal to, or has applied property of a value equal
39 to, not less than twenty per cent of the cost of establishing
40 the industrial development project; and

41 2. The authority shall have also determined that the
42 industrial development agency obtained from other inde-
43 pendent and responsible sources, such as banks and insur-
44 ance companies or otherwise, other funds necessary for
45 payment of all the cost of establishing the industrial de-
46 velopment project, and that the industrial development
47 agency participation and these funds, together with the
48 machinery and equipment provided by the responsible
49 tenant or responsible buyer, has been adequate to insure
50 completion and operation of the plant or facility: *Pro-*
51 *vided, however,* That the proceeds of any loan made by
52 the authority to the industrial development agency pur-
53 suant to this subsection (B) shall be used only for the
54 establishment of additional industrial development proj-
55 ects in furtherance of the public purposes of this article.

56 Any such loan of the authority shall be for such period
57 of time and shall bear interest at such rate as shall be de-
58 termined by the authority and shall be secured by bond

59 of the industrial development agency and by deed of trust
60 on the industrial development project for which such loan
61 was made, such deed of trust to be second and subordinate
62 only to the deed of trust securing the first lien obligation
63 issued to secure the commitment of funds from the afore-
64 said independent and responsible sources and used in the
65 financing of the industrial development project.

66 Moneys so loaned by the authority to industrial develop-
67 ment agencies shall be withdrawn from the industrial de-
68 velopment fund and paid over to the industrial develop-
69 ment agency in such manner as shall be provided and pre-
70 scribed by the rules and regulations of the authority.

71 All payments of interest on said loans and the principal
72 thereof shall be deposited by the authority in the indus-
73 trial development fund.

74 Loans by the authority to an industrial development
75 agency for an industrial development project shall be
76 made only in the manner and to the extent as in this sec-
77 tion provided, except, however, in those instances
78 wherein an agency of the federal government participates
79 in the financing of an industrial development project by
80 loan, grant or otherwise of federal funds. When any fed-
81 eral agency does so participate the authority may adjust
82 the required ratios of financial participation by the in-
83 dustrial development agency, the source of independent
84 funds, and the authority in such manner as to insure the
85 maximum benefit available to the industrial development
86 agency, the authority, or both, by the participation of the
87 federal agency: *Provided, however,* That no such adjust-
88 ment of such ratios shall cause the authority to grant a
89 loan to the industrial development agency in excess of
90 thirty per cent of the cost or estimated cost of the indus-
91 trial development project.

92 Where any federal agency participating in the financ-
93 ing of an industrial development project is not permitted
94 to take as security for such participation a deed of trust
95 the lien of which is junior to the deed of trust of the au-
96 thority, the authority shall, in such instances, be author-
97 ized to take as security for its loan to the industrial de-
98 velopment agency a deed of trust junior in lien to that of
99 the federal agency.

Sec. 8. *Loan Application Requirements; Hearings Upon*

2 *Applications.*—Prior to the loaning of any funds to an in-
3 dustrial development agency for an industrial develop-
4 ment project in a critical economic area, the authority shall
5 receive from such industrial development agency a loan
6 application in form adopted by the authority which shall
7 contain, without being limited to, the following provisions:

8 (a) A general description of the industrial develop-
9 ment project and a general description of the industrial
10 or manufacturing enterprise for which the industrial de-
11 velopment project has been or is to be established.

12 (b) A legal description of all real estate necessary for
13 the industrial development project.

14 (c) Such plans and other documents as may be required
15 to show the type, structure and general character of the
16 industrial development project.

17 (d) A general description of the type, classes and num-
18 ber of employees employed or to be employed in the op-
19 eration of the industrial development project.

20 (e) Cost or estimates of cost of establishing the indus-
21 trial development project.

22 (f) A general description and statement of value of
23 any property, real or personal, of the industrial develop-
24 ment agency applied or to be applied to the establishment
25 of the industrial project.

26 (g) A statement of cash funds previously applied, or
27 then held by the industrial development agency which
28 are available for and are to be applied, to the establish-
29 ment of the industrial development project.

30 (h) Evidence of the arrangement made by the indus-
31 trial development agency for the financing of all cost of
32 the industrial development project over and above the
33 participation of the industrial agency.

34 (i) A general description of the responsible tenant to
35 which the industrial development agency has leased or
36 will lease the industrial development project or of the
37 responsible buyer to which the industrial development
38 agency has sold or will sell the project.

39 (j) A general description of the form of lease or sales
40 agreement entered into or to be entered into by and be-

41 tween the industrial development agency and its responsi-
42 ble tenant or responsible buyer.

43 (k) Evidence that the establishment of the industrial
44 development project will not cause the removal of an in-
45 dustrial or manufacturing plant or facility from one area
46 of the state to another area of the state.

47 The board of the authority shall hold such hearings and
48 examinations as to each loan application received as shall
49 be necessary to determine whether the public purposes
50 of this article will be accomplished by the granting of
51 loans within such applications requested.

52 When the board shall have determined said facts favor-
53 able as to any application, it is authorized and empow-
54 ered, having due regard to the promotion of the public
55 purposes herein declared, to grant a loan to an industrial
56 development agency in the manner and to the extent as
57 in this article provided.

Sec. 9. *Industrial Development Fund.*—There is hereby
2 created a special account in the treasury of the state to be
3 known as the industrial development fund to which shall
4 be accredited any appropriation made by the Legislature
5 to the authority, as well as such other deposits as in this
6 section provided.

7 As often as may be necessary, the authority shall requi-
8 sition from the industrial development fund such amounts
9 as may be necessary to provide adequate funds for the
10 payment of the administration of the purposes of this
11 article.

12 The authority shall also requisition, from time to time
13 from the industrial development fund such amounts as
14 shall be allocated and appropriated by the authority for
15 loans to industrial development agencies for industrial
16 development projects. When and as the amounts so al-
17 located and appropriated by the authority as loans to in-
18 dustrial development agencies are repaid to the authority
19 pursuant to the terms of the mortgages and other agree-
20 ments made and entered into by the authority, the au-
21 thority shall pay such amounts into the industrial devel-
22 opment fund, it being the intent of this article that the in-
23 dustrial development fund shall operate as a revolving

24 fund whereby all appropriations and payments made
25 thereto may be applied and re-applied to the purposes of
26 this article.

27 At any time that the authority shall determine that
28 funds held for the credit of the industrial development
29 fund are in excess of the amount needed by the authority
30 to carry out the purposes of this article, the authority shall
31 take such action as shall be required to release such excess
32 from the industrial development fund and transfer the
33 same to the general fund of the state treasury.

Sec. 10. *Governing Body; Organization and Meetings;*
2 *Quorum; Additional Powers of Authority.*—The powers
3 of the authority shall be exercised by a governing body
4 consisting of the members of the authority acting as a
5 board. Within ninety days after this article shall become
6 effective, the board shall meet and organize. The com-
7 missioner of commerce and his successor in office shall be
8 the chairman and chief executive officer and the board
9 shall elect a secretary and a treasurer from their number.
10 At the first meeting in each year thereafter they shall
11 elect from their number a secretary and treasurer.

12 A majority of the members shall constitute a quorum
13 of the board for the purpose of organizing the authority
14 and conducting the business thereof, and, except in the
15 instance of loan applications, all action may be taken by a
16 vote of a majority of the members present, unless in any
17 case the by-laws shall require a larger number; approval
18 or rejection of loan applications shall be by a majority
19 vote of the full membership of the board.

20 The board shall have full authority to manage the prop-
21 erties and business of the authority, and to prescribe,
22 amend and repeal by-laws, rules and regulations govern-
23 ing the manner in which the business of the authority
24 may be conducted, and the powers granted to it may be
25 exercised and embodied.

26 The department of commerce shall provide staff serv-
27 ices to the authority for its administration of the article,
28 including liaison between the authority and industrial de-
29 velopment agencies and related organizations, and be-
30 tween the authority and other agencies of the state whose

31 facilities and services may be useful to the authority in
32 its work.

33 The authority is authorized to make reimbursement to
34 any agency of the state for such special expenses as may
35 be incurred in the provision of any services or the use of
36 any facilities required by the authority.

37 In addition, the authority may employ an executive di-
38 rector, appoint its own counsel and legal staff, and, as re-
39 quired for special studies and surveys, retain such temp-
40 orary engineering, finance and other consultants and tech-
41 nicians as it may require.

Sec. 11. *Moneys of the Authority; Deposits; Payments.*

2 —All moneys of the authority, from whatever source
3 derived, shall be paid to the treasurer of the authority.
4 Said moneys shall be deposited in the first instance by the
5 treasurer in one or more banks or trust companies, in one
6 or more special accounts, and each of such special ac-
7 counts shall be continuously secured by a pledge of direct
8 obligations of the United States of America or of the state,
9 having an aggregate market value, exclusive of accrued
10 interest, at all times at least equal to the balance on de-
11 posit in such account. Such securities shall either be
12 deposited with the treasurer or be held by a trustee or
13 agent satisfactory to the authority. All banks and trust
14 companies are authorized to give such security for such
15 deposits. The moneys in said accounts shall be paid out
16 on the warrant or other order of the treasurer of the au-
17 thority, or of such other person or persons as the authority
18 may authorize to execute such warrants or orders.

Sec. 12. *Conflict of Interest.*—No member of the au-
2 thority or officer or employee thereof shall either directly
3 or indirectly be a party to or be in any manner interested
4 in any contract or agreement with the authority for any
5 matter, cause or thing whatsoever by reason whereof any
6 liability or indebtedness shall in any way be created
7 against such authority. If any contract or agreement
8 shall be made in violation of the provisions of this section,
9 the same shall be null and void and no action shall be
10 maintained thereon against such authority.

Sec. 13. *Limitation of Powers.*—The state does hereby

2 pledge to and agree with the United States and any other
3 federal agency that in the event any federal agency
4 shall construct or loan or contribute any funds for the
5 construction, extension, improvement or enlargement of
6 any industrial development project, or any portion there-
7 of, the state will not alter or limit the rights and powers
8 of the authority in any manner which would be incon-
9 sistent with the due performance of any agreements be-
10 tween the authority and any such federal agency, and the
11 authority shall continue to have and may exercise all
12 powers herein granted, so long as the same shall be neces-
13 sary or desirable for the carrying out of the purposes of
14 this article.

Sec. 14. *Audit.*—The accounts and books of the author-
2 ity, including its receipts, disbursements, contracts, mort-
3 gages and/or deeds of trust, investments and other mat-
4 ters relating to its finances, operation and affairs, shall be
5 examined and audited from time to time by the state tax
6 commissioner in accordance with statutes applicable to
7 audits of other state agencies.

Sec. 15. *Severability and Construction.*—The provisions
2 of this article are considered remedial and shall be lib-
3 erally construed and interpreted so as to effect the gen-
4 eral purposes and objectives hereof. The provisions of the
5 article shall be severable, and if any of the provisions
6 thereof shall be held unconstitutional, such decisions shall
7 not affect the validity of any of the remaining provisions
8 of this article. It is hereby declared as the legislative in-
9 tent that this article would have been adopted had such
10 unconstitutional provisions not been included herein.

— 3 —

CHAPTER 140

(Senate Bill No. 162—By Mr. Riley)

[Passed February 27, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter twenty-six 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 confinement of tuberculosis patients who are a health menace to others.

Article 5-a. Tuberculosis Control.

Section

5-a. Return of escapees of state tuberculosis institutions.

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter twenty-six 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:

Section 5-a. Return of Escapees of State Tuberculosis

2 *Institutions.*—If any person confined in a state tubercu-
3 losis institution by virtue of an order of a circuit court as
4 provided for in section five of this article shall escape
5 therefrom, the superintendent thereof shall issue a notice
6 giving the name and description of the person escaping
7 and requesting his or her apprehension and return to the
8 hospital, and may offer such reward for the return of such
9 person as the commissioner of public institutions may
10 authorize. The superintendent shall issue a warrant di-
11 rected to the sheriff of the county commanding him to
12 arrest and carry such escaped person back to the hospital,
13 which warrant may be executed in any part of the state.
14 If such person flee to another state, the superintendent
15 shall notify the commissioner of public institutions, and
16 the commissioner of public institutions shall take such
17 action as may be deemed proper in the premises for the
18 return of such person to the hospital.

CHAPTER 141

(House Bill No. 51—By Mr. Speaker, Mr. Singleton, and
Mr. Seibert)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter twenty-seven of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to West Virginia Training School.

Article 10. West Virginia Training School.

Section

1. Persons who may be admitted.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Persons Who May Be Admitted.*—There shall
2 be admitted to the West Virginia Training School any per-
3 son mentally ill from birth or from an early age, so pro-
4 nounced that he is unable to care for himself and manage
5 his affairs with ordinary prudence and who, because of
6 such mental illness, is a menace to the happiness and
7 welfare of himself or others in the community, and re-
8 quires care, training or control for the protection of him-
9 self or of others. This type of person is usually classified
10 as a mental defective. Should the school at any time not
11 be able to accommodate all persons of such class offered
12 for admission, preference in admission shall be given to
13 children between the ages of seven and fourteen years,
14 inclusive, who are capable of being trained and of attend-
15 ing to their own physical needs.

CHAPTER 142

(Senate Bill No. 121—By Mr. Carson, Mr. President,
and Mr. Carrigan)

[Passed March 11, 1961; in effect ninety days from passage. Became a law without the approval of the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter seven, and to add to said article seven a new section, designated section sixteen; to amend and reenact

section seven, article two, chapter eleven, and to add to said article two a new section, designated section eleven; to amend and reenact sections one, two, three, four, five, six, nine, ten, twelve, thirteen, fifteen, nineteen, twenty-four and twenty-four-a, article three, chapter eleven, and to add to said article three a new section, designated section thirty; to amend and reenact sections one, two, three, four and nine, article five, chapter eleven; to amend and reenact sections one, nine, eleven, eighteen, twenty-two and twenty-three, article six, chapter eleven, and to add to said article six a new section, designated section twenty-five; to amend and reenact sections five, six-c, eight, nine, ten, ten-a, twelve, twelve-a, fourteen and fourteen-a, article eight, chapter eleven, and to add to said article eight a new section, designated section thirty-three; to amend and reenact sections two, three, six, eight and fourteen, article one, chapter eleven-a, and to add to said article one, a new section, designated section eighteen; to amend and reenact sections four, ten-a, eleven, thirteen and fourteen, article two, chapter eleven-a, and to add to said article two a new section, designated section nineteen; to amend and reenact sections two, four, five and fourteen, article three, chapter eleven-a, and to add to said article three a new section, designated section forty-four; to amend and reenact section nine, article four, chapter eleven-a; to amend and reenact section four, article four, chapter eighteen, and to add to said article four a new section, designated section twelve; to amend and reenact section four, article five, chapter eighteen, and to add to said article five a new section, designated section thirty-eight; to amend and reenact sections two-a and three-a, article nine, chapter eighteen, and to add to said article nine a new section, designated section eight, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the assessment of property and the levying and collection of taxes thereon.

Chapter

- 7. County Courts and Officers.**
- 11. Taxation.**
- 18. Education.**

Be it enacted by the Legislature of West Virginia:

That section seven, article seven, chapter seven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section sixteen; that section seven, article two, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section eleven; that sections one, two, three, four, five, six, nine, ten, twelve, thirteen, fifteen, nineteen, twenty-four and twenty-four-a, article three, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section thirty; that sections one, two, three, four and nine, article five, chapter eleven, be amended and reenacted; that sections one, nine, eleven, eighteen, twenty-two and twenty-three, article six, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section twenty-five; that sections five, six-c, eight, nine, ten, ten-a, twelve, twelve-a, fourteen and fourteen-a, article eight, chapter eleven, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section thirty-three; that sections two, three, six, eight and fourteen, article one, chapter eleven-a, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section eighteen; that sections four, ten-a, eleven, thirteen and fourteen, article two, chapter eleven-a, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section nineteen; that sections two, four, five and fourteen, article three, chapter eleven-a, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section forty-four; that section nine, article four, chapter eleven-a, be amended and reenacted; that section four, article four, chapter eighteen, be amended and reenacted, and that said article be further amended by adding thereto a new section, designated section twelve; that section four, article five, chapter eighteen, be amended and reenacted, and that said article be further amended by adding thereto a new section thirty-eight; that sections two-a and three-a, article nine, chapter eighteen, be amended and reenacted, and that said article be further

amended by adding thereto a new section, designated section eight, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

CHAPTER 7. COUNTY COURTS AND OFFICERS

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

7. Deputies and assistants of sheriffs and clerks of the courts; salaries; fiscal budget.
16. Exception.

Section 7. *Deputies and Assistants of Sheriffs and Clerks of the Courts; Salaries; Fiscal Budget.*—The sheriff, clerk of the county court, clerk of the circuit court, clerk of the criminal, common pleas or intermediate courts, on or before February first of each year, shall file with the county court, or tribunal in lieu thereof, a detailed statement of the probable amount necessary to be expended for deputies, assistants, and other employees of their respective offices in the following fiscal year. If any such officer shall fail to file the statement hereby required, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars, or imprisoned in the county jail not less than thirty days nor more than six months, or both, in the discretion of the court. The county court, or tribunal in lieu thereof, shall, not later than fifteen days after the filing of such statement, take up and consider the same and shall determine and fix an aggregate sum to be expended for the period covered by such statement for the compensation of all such deputies, assistants, and other employees of the respective officers, which shall be reasonable and proper, regard being had to the amount of labor necessary to be performed by those to receive the compensation, and shall enter upon its court record a finding of its action: *Provided*, That any clerk of a circuit court, feeling that the sum so fixed and determined is inadequate to enable him to properly conduct his office, may appeal to the circuit court of such county, which shall determine and fix a reasonable and just amount for the compensation of his deputies and assist-

31 ants: *Provided further*, That any taxpayer feeling ag-
32 grieved at the allowance made by the county court to the
33 sheriff, and any sheriff feeling that the business of his
34 office cannot be conducted properly by the maximum al-
35 lowance by the county court for office expenditures, or
36 the number of deputies and their salaries, shall be al-
37 lowed the right of appeal to the circuit court of such coun-
38 ty for the purpose of determining the equity of such
39 maximum allowance.

40 The officers herein named shall appoint and employ
41 such deputies, assistants and other employees in the man-
42 ner provided by law, as may be necessary for their respec-
43 tive offices and fix their compensation, and shall file with
44 the clerk of the county court, or other tribunal in lieu
45 thereof, a statement in writing showing such action and
46 setting forth the name of each deputy, assistant and em-
47 ployee, the time for which employed and the monthly
48 compensation; but the compensation for all deputies, as-
49 sistants and other employees shall not exceed in the
50 aggregate, for each office, the amount so fixed for that
51 office as hereinbefore provided. The officers herein named
52 shall have authority to discharge any deputy, assistant,
53 or other employee, by filing with the clerk of the county
54 court, or tribunal in lieu thereof, a statement in writing
55 showing such action. All statements required to be filed
56 by this section shall be verified by the affidavit of the
57 person making them, and among other things contained
58 in the affidavit shall be the statement that the amounts
59 shown therein were the amounts actually paid or intended
60 to be paid to the deputies, assistants, or other employees,
61 without rebates, or any agreement, understanding and
62 expectation that any part thereof shall be repaid to him,
63 and that nothing has heretofore been paid or promised
64 him on that account, and that if he shall thereafter re-
65 ceive any money, or thing of value, on account thereof,
66 he will account for and pay the same to the county. Until
67 the statements required by this section have been filed,
68 no allowance or payments shall be made to any officer for
69 deputies, assistants or other employees.

Sec. 16. *Exception.*—Notwithstanding the provisions of

- 2 section seven of this article, the provisions of said section
3 seven as of January first, one thousand nine hundred
4 sixty-one, shall be applicable for the fiscal year ending
5 June thirty, one thousand nine hundred sixty-two.

CHAPTER 11. TAXATION

Article

2. Assessors.
3. Assessments Generally.
5. Assessment of Personal Property.
6. Assessment of Public Service Corporations.
8. Levies.

Article 2. Assessors.

Section

7. State and local meetings.
11. Exception.

Section 7. *State and Local Meetings.*—There shall be an
2 annual meeting of the assessors, which meeting the as-
3 sessors of the several counties of the state shall attend.
4 The date and place of such meeting shall be fixed by the
5 tax commissioner and due notice thereof shall be given
6 to the assessors of the state. The tax commissioner shall
7 prepare a program of matters pertaining to assessments
8 and work of the assessors to be discussed at such meeting
9 and he shall attend and be ex officio chairman of the same.
10 The meeting shall continue for a period of at least two
11 days but not more than four days. The actual and neces-
12 sary expense incurred by any assessor and not more
13 than two deputies to be designated by him in attendance
14 at such meeting shall be paid out of the county treasury
15 of the county of the assessor and deputies so attending.
16 Before such payment, however, the assessor shall file an
17 itemized statement, which shall be sworn to, of his actual
18 and necessary expenses, with the clerk of the county
19 court.

20 In addition to the meeting hereinbefore provided for,
21 there shall be at least two meetings of each assessor and
22 his deputies between the first day of the assessment year
23 and the twentieth day of January, of the current year,
24 at such time and place as the assessor shall designate,

25 of which meeting all deputies shall have notice, for the
26 purpose of securing uniform valuation of property, both
27 real and personal, throughout the entire county, accord-
28 ing to the true and actual value. The last meeting shall
29 be held after the work of listing property has been com-
30 pleted, at which meeting all the lists shall be thoroughly
31 gone over, and if found to be erroneous, either in the
32 amount of property, real or personal, assessed to any
33 person, firm or corporation, or in the value given to any
34 item of property by the taxpayer shall be revised and cor-
35 rected by placing on such list the omitted property and
36 giving to it, as well as to any property that has been
37 listed, but which has been incorrectly valued, the true
38 and actual value thereof according to the rule prescribed
39 by law and by omitting property improperly listed.

Sec. 11. *Exception.*—Notwithstanding the provisions of
2 section seven of this article, between the first day of Jan-
3 uary and the twentieth day of June in the year one thou-
4 sand nine hundred sixty-one, the assessor and his deputies
5 shall meet for the purposes specified by section seven of
6 this article.

Article 3. Assessments Generally.

Section

1. Time and basis of assessments; true and actual value; default; re-assessment; special assessors.
2. Canvass by assessor; lists of property.
3. Who to furnish property list.
4. Oath of owner.
5. Correction of previous property books; entry of omitted property.
6. Statements of assessed valuations for municipalities and boards of education; extension of levies.
9. Property exempt from taxation.
10. Failure to list property, etc.; collection of penalties and forfeitures.
12. Assessment of corporate property; reports to assessor by corporations.
13. Entry of corporate property by assessor.
15. Assessment of capital used in trade or business by natural persons.
19. Property books; time for completing; extension of levies; copies; to whom delivered.
24. Review and equalization by county court.
- 24-a. Protest to assessor; appeal to circuit court.
30. Exception.

Section 1. *Time and Basis of Assessments; True and*
2 *Actual Value; Default; Reassessment; Special Assessors.*
3 —All property shall be assessed annually as of the first

4 day of July at its true and actual value; that is to say,
5 at the price for which such property would sell if volun-
6 tarily offered for sale by the owner thereof, upon such
7 terms as such property, the value of which is sought to
8 be ascertained, is usually sold, and not the price which
9 might be realized if such property were sold at a forced
10 sale, except that the true and actual value of all property
11 owned, used and occupied by the owner thereof ex-
12 clusively for residential purposes and upon farms oc-
13 cupied and cultivated by their owners or bona fide tenants
14 shall be arrived at by giving primary, but not exclusive,
15 consideration to the fair and reasonable amount of in-
16 come which the same might be expected to earn, under
17 normal conditions in the locality wherein situated, if
18 rented. The taxes upon all property shall be paid by those
19 who are the owners thereof on that day, whether it be
20 assessed to them or others. If at any time after the be-
21 ginning of the assessment year, it be ascertained by the
22 tax commissioner that the assessor, or any of his deputies,
23 is not complying with this provision or that he has failed,
24 neglected or refused, or is failing, neglecting or refusing
25 after five days' notice to list and assess all property
26 therein at its true and actual value, the tax commissioner
27 may order and direct a reassessment of any or all of the
28 property in any county, district or municipality, where
29 any assessor, or deputy, fails, neglects or refuses to
30 assess the property in the manner herein provided. And,
31 for the purpose of making such assessment and correction
32 of values, the tax commissioner may appoint one or more
33 special assessors, as necessity may require, to make such
34 assessment in any such county, and any such special
35 assessor or assessors, as the case may be, shall have all
36 the power and authority now vested by law in assessors,
37 and the work of such special assessor or assessors shall
38 be accepted and treated for all purposes by the county
39 boards of review and equalization and the levying bodies,
40 subject to any revisions of value on appeal, as the true
41 and lawful assessment of that year as to all property
42 valued by him or them. The tax commissioner shall, with
43 the approval of the board of public works, fix the com-

44 pensation of all such special assessors as may be desig-
45 nated by him, which, together with their actual expenses,
46 shall be paid out of the county fund by the county court of
47 the county in which any such assessment is ordered, upon
48 the receipt of a certificate of the tax commissioner filed
49 with the clerk of the court showing the amounts due and
50 to whom payable, after such expenses have been audited
51 by the county court.

52 Any assessor who knowingly fails, neglects or refuses
53 to assess all the property of his county, as herein provided,
54 shall be guilty of malfeasance in office, and, upon convic-
55 tion thereof, shall be fined not less than one hundred
56 nor more than five hundred dollars, or imprisoned in the
57 county jail not less than three nor more than six months,
58 or both, in the discretion of the court, and upon convic-
59 tion, shall be removed from office.

Sec. 2. *Canvass by Assessor; Lists of Property.*—On the
2 first day of July, in each year, the assessors and their
3 deputies shall begin the work of assessment in their
4 respective counties, and shall, from that date, diligently
5 and continuously pursue with all reasonable dispatch,
6 their work of assessment until the same is completed:
7 *Provided, however,* That the assessor and his deputies
8 shall finish their work of assessment, and complete the
9 land and personal property books not later than the
10 thirtieth day of January. Beginning on the first day of
11 July, as aforesaid, the assessor or a deputy shall call upon
12 every person in the territory, appointed to such assessor
13 and deputy, who is liable to assessment, and thereupon
14 such person shall furnish to such assessor, or his deputy,
15 a full and correct description of all of the real estate and
16 personal property of which he was the owner on the first
17 day of July of the current year, fixing what he deems
18 to be the true and actual value of each item of property,
19 both real and personal, for the guidance of the assessor,
20 who shall finally settle and determine the actual value of
21 each item of such property by the rule prescribed in
22 section one of this article; such person shall also, at the
23 same time, make separate, full and true statements, in
24 like manner, and upon similar blanks to be furnished

25 him, distinctly setting forth in each a correct description
26 of all the property, real and personal, held, possessed
27 or controlled by him, as executor, administrator, guardian,
28 trustee, receiver, agent, partner, attorney, president or
29 accounting officer of a corporation, consignee, broker,
30 or in any representative or fiduciary character, and he
31 shall fix what he deems the true and actual value thereof
32 to each item of such property, which valuation shall be
33 subject to revision and change by the assessor in like
34 manner as property owned by such person in his own
35 right: *Provided, however,* That no person shall be com-
36 pelled to furnish the list mentioned in this section sooner
37 than the tenth day of July of the current year.

38 The assessor shall perform such other duties while
39 making his assessment as may be required of him by
40 law.

Sec. 3. *Who to Furnish Property List.*—The list required
2 in the preceding section shall be made and information
3 furnished: (a) With respect to property of a minor, by
4 his guardian, if he has one, and if he has none, by his
5 father, if living, or, if not, by his mother, if living, and
6 if neither be living or be a resident of this state, by the
7 person having charge of the property; (b) with respect
8 to the separate property of a married woman, by herself
9 or her husband in her name; (c) with respect to the
10 property of a husband, who is out of the state or incapable
11 of listing such property, by his wife; (d) with respect to
12 the property held in trust, by the trustee, if in possession
13 thereof, otherwise by the party for whose benefit it is
14 held; (e) with respect to the personal property of a de-
15 ceased person, by the personal representative; (f) with
16 respect to the property of an insane person, or a person
17 sentenced to confinement in the penitentiary, by his
18 committee; (g) with respect to the property of a com-
19 pany, whether incorporated or not, whose assets are in
20 the hands of an agent, factor or receiver, by such agent,
21 factor or receiver, otherwise by the president or proper
22 accounting officer, partner or agent within the state; (h)
23 with respect to credits or investments, in the possession
24 or under the charge of a receiver or commissioner, by

25 such receiver or commissioner; and (i) with respect to
26 shares in a banking institution or national banking asso-
27 ciation, by the cashier, secretary or principal accounting
28 officer of such banking institution or national banking
29 association, as provided in section fourteen of this article.

Sec. 4. *Oath of Owner.*—The assessor and his deputies
2 are empowered to administer oaths in all matters per-
3 taining to their official business, and every such list pro-
4 vided to be made out by the two next preceding sections
5 shall be sworn to or affirmed, by the person making the
6 same, before it shall be received by the assessor or any
7 of his deputies; the form of such oath or affirmation, when
8 made by the person owning the property (and the oath or
9 affirmation of the owner of the property shall be required
10 in all cases where it is practicable, instead of the oath or
11 affirmation of his agent or manager), shall be substantially
12 as follows, to-wit:

13 State of West Virginia, County of..... ss:

14 I,, do solemnly swear (or
15 affirm) that to the best of my knowledge, information
16 and belief, the foregoing statement contains a true, full
17 and correct list of all property, real and personal, owned
18 by me on the first day of the assessment year; that where
19 I have been unable to exhibit any class of property to the
20 assessor or to his deputy, such property has been fully
21 and fairly described to him and its true condition repre-
22 sented; that I have in no case sought to mislead the
23 assessor or his deputy, as to the entire quantity, quality
24 or value of the property; that I have reported the value
25 of all credits and investments owned by me on the said
26 day and liable to taxation, except bonds of the United
27 States, and other tax exempt securities, and except stock
28 in a banking institution, and other incorporated companies
29 whose property is assessed in the name of such corpora-
30 tion either within or without this state; that, since the
31 first day of the assessment year, I have not directly or
32 indirectly converted or exchanged any of my property
33 temporarily for the purpose of evading the assessment
34 thereof for taxes into nontaxable property or securities
35 of any kind; that I have, to the best of my knowledge and

36 judgment, valued the said property, both real and per-
37 sonal, at its true and actual value on the first day of the
38 assessment year, by which I mean the price that could
39 be obtained for said property at private or voluntary
40 sale, and on such terms as are usually employed in the
41 selling of such property, and not the price which might
42 be realized at a forced or auction sale; so help me, God.

43

44 Subscribed and sworn (or affirmed) to before me, this
45 day of 19.....

46

....., Assessor.

47

By.....

Sec. 5. *Correction of Previous Property Books; Entry
2 of Omitted Property.*—The assessor in making out the
3 land and personal property books, shall correct any and
4 every mistake he shall discover in the books for any
5 previous year.

6 When the assessor shall ascertain that any real or per-
7 sonal property in his county liable to taxation, other than
8 that mentioned in the next succeeding paragraph, has
9 been omitted from the land or personal property books
10 for a period of less than five years, he shall make an
11 entry thereof in the proper book of the year in which
12 such omission was discovered, and assess the same accord-
13 ing to the rule prescribed in section one of this article,
14 and shall charge the same with all taxes chargeable
15 against it at the rate of levy for the year or years the
16 same was omitted, together with interest thereon at the
17 rate of six per cent per annum for the years the same was
18 omitted from the books.

19 And when the assessor shall ascertain that any notes,
20 bonds, bills and accounts receivable, stocks and other in-
21 tangible personal property in his county liable to taxation
22 has been omitted from the personal property books for a
23 period of five years or less after December thirty-first,
24 one thousand nine hundred thirty-two, he shall make
25 entry thereof in the personal property book of the year
26 in which such omission was discovered, and assess the
27 same at its true and actual value according to the rule

28 prescribed in section one of this article, and shall charge
29 the same with all taxes chargeable against it after the
30 year last aforesaid at the rate of levy for the year or years
31 the same was omitted after the year aforesaid, together
32 with interest thereon at the rate of six per cent per annum
33 for the years the same was omitted from the books.

34 Any assessor failing to make such entry as in this act
35 provided, when discovered by him, or called to his atten-
36 tion by any taxpayer interested therein, shall forfeit one
37 hundred dollars.

Sec. 6. Statements of Assessed Valuations for Municipalities and Boards of Education; Extension of Levies.—

2 The assessor shall annually, not later than the seventh
3 day of March, furnish to the recorder or clerk of the
4 city or town council of every incorporated city and town
5 in his county and also to the secretary of the board
6 of education of his county, a certified statement, show-
7 ing in separate amounts the aggregate value of all
8 property, real and personal, and of all property within
9 each class as provided in section four, article eight of
10 this chapter, and the clerk of the county court shall, in
11 like fashion, certify the aggregate value of all property
12 assessed by the board of public works, or other board
13 in lieu thereof, in such city or district, as ascertained
14 from the land and personal property books and from the
15 statement furnished by the auditor to the county clerk
16 of the value of property assessed in such county by the
17 board for the current year.

19 The statement so furnished shall be taken, by the coun-
20 cil of such city or town, as the proper valuation of all
21 property situated therein and liable for taxation for
22 municipal purposes notwithstanding any provisions which
23 may be contained in the charter of any city or town. Upon
24 receiving such statement, the recorder or clerk of the
25 council, shall present the same to the council at a meeting
26 to be held for the purpose of making the estimate and
27 laying the levy as hereinafter required; and, as soon as
28 the rate shall have been determined upon, the recorder,
29 or secretary of the council, shall furnish the officer whose
30 duty it is to make out the land and personal property

31 books a certified copy of the order of such city or town
32 council fixing the rate of tax, and such officer shall there-
33 upon extend the tax against the property situated in such
34 city or town, in the land books and the personal property
35 book of his county, in separate columns in such books,
36 which columns shall be headed with the words: "Town,
37 or city, tax for the town, or city, of _____."

Sec. 9. *Property Exempt from Taxation.*—All property,
2 real and personal, described in this section, and to the
3 extent herein limited, shall be exempt from taxation,
4 that is to say: Property belonging to the United States,
5 other than property permitted by the United States to be
6 taxed under state law; property belonging exclusively to
7 the state; property belonging exclusively to any county,
8 district, city, village, or town in this state, and used for
9 public purposes; property located in this state belonging
10 to any city, town, village, county or any other political
11 subdivision of another state, and used for public purposes;
12 property used exclusively for divine worship; parsonages,
13 and the household goods and furniture pertaining thereto;
14 mortgages, bonds and other evidence of indebtedness in
15 the hands of bona fide owners and holders hereafter
16 issued and sold by churches and religious societies for
17 the purposes of securing money to be used in the erection
18 of church buildings used exclusively for divine worship,
19 or for the purpose of paying indebtedness thereon; ceme-
20 teries; property belonging to, or held in trust for, colleges,
21 seminaries, academies and free schools, if used for edu-
22 cational, literary or scientific purposes, including books,
23 apparatus, annuities, and furniture; public and family
24 libraries; property used for charitable purposes, and not
25 held or leased out for profit; property used for area eco-
26 nomic development purposes by nonprofit corporations
27 when such property is not leased out for profit; all real
28 estate not exceeding one-half acre in extent, and the
29 buildings thereon, and used exclusively by any college or
30 university society as a literary hall, or as a dormitory or
31 club room, if not leased or otherwise used with a view to
32 profit; all property belonging to benevolent associations,
33 not conducted for private profit; property belonging to
34 any public institution for the education of the deaf, dumb

35 or blind, or any hospital not held or leased out for profit;
36 house of refuge, lunatic or orphan asylum; homes for
37 children or for the aged, friendless or infirm, not con-
38 ducted for private profit; fire engines and implements for
39 extinguishing fires, and property used exclusively for the
40 safekeeping thereof, and for the meeting of fire com-
41 panies; and all property on hand to be used in the sub-
42 sistence of livestock on hand at the commencement of the
43 assessment year, money, household goods to the value of
44 two hundred dollars, dead victuals laid away for family
45 use and any other property or security exempted by any
46 other provision of law; but no property shall be exempt
47 from taxation which shall have been purchased or pro-
48 cured for the purpose of evading taxation, whether
49 temporarily holding the same over the first day of the
50 assessment year or otherwise: *Provided, however,* That
51 the property, both real and personal, which is exempt
52 from taxation by this section, except money, shall be
53 entered upon the assessor's books, together with the true
54 and actual value thereof, but no taxes shall be levied upon
55 the same or extended upon the assessor's books.

56 Notwithstanding any other provision of this section,
57 however, no language herein shall be construed to exempt
58 from taxation any property owned by, or held in trust
59 for, educational, literary, scientific, religious or other
60 charitable corporations or organizations, unless such prop-
61 erty is used primarily and immediately for the purposes
62 of such corporations or organizations.

Sec. 10. *Failure to List Property, etc.; Collection of*
2 *Penalties and Forfeitures.*—If any person, firm or corpora-
3 tion, including public service corporations whose duty it
4 is by law to list any real estate or personal property for
5 taxation, shall refuse to furnish a proper list thereof or
6 refuse to list within the time required by law, or to make
7 such oath as required by this chapter; or if any person,
8 firm or corporation, including public service corporations,
9 shall refuse to answer or shall answer falsely any ques-
10 tion asked by the assessor or by the tax commissioner,
11 or shall fail or refuse to deliver any statement required
12 by law, he or it shall forfeit not less than twenty-five nor

13 more than one hundred dollars, and shall be denied all
14 remedy provided by law for the correction of any assess-
15 ment made by the assessor or by the board of public
16 works. If any person, firm or corporation, including public
17 service corporations, required by law to make return of
18 property for taxation, whether such return is to be made
19 to the assessor, the board of public works, or any other
20 assessing officer or body, fails to return a true list of all
21 property which should be assessed in this state, including
22 notes, bonds, bills and accounts receivable, stocks and any
23 other intangible personal property, such person, firm or
24 corporation, in addition to all other penalties provided by
25 law, shall forfeit two per cent of the value of the property
26 not yet returned and not otherwise taxed in this state.
27 A forfeiture as to all property aforesaid may be enforced
28 for any such default occurring in any year not exceeding
29 five years immediately prior to the time the same is dis-
30 covered, but no liability to penalty or forfeiture as to
31 notes, bonds, bills and accounts receivable, stocks and
32 other intangible personal property arising prior to the
33 first day of January, one thousand nine hundred thirty-
34 three, shall be enforceable on behalf of the state or of any
35 of its subdivisions. Each failure to make a true return as
36 herein required shall constitute a separate offense, and a
37 forfeiture shall apply to each of them, but all such for-
38 feitures, to which the same person, firm or corporation
39 is liable, shall be enforced in one proceeding against such
40 person, firm or corporation, or against the estate of any
41 deceased person and shall not exceed ten per cent of the
42 value of the property not returned. The state tax com-
43 missioner shall collect such forfeitures without suit, but
44 if unable so to do, shall instruct the prosecuting attorney
45 of the county in which the defaulting taxpayer resides
46 or has its principal office, or in which such property
47 should have been returned for taxation, to enforce collec-
48 tion. It shall thereupon be the duty of such prosecuting
49 attorney to institute and prosecute proceedings in the
50 name of the state of West Virginia against the defaulting
51 taxpayer, or, in case of a decedent, against his personal
52 representative, in the circuit court upon motion, whereof
53 the defendant shall have at least twenty days' notice.

54 Either party shall have the right to have the issue tried
55 by jury, and the state, as well as the defendant, shall
56 have the right to an appeal. Ten per cent of the amount
57 collected and an attorney's fee of ten dollars to be taxed
58 as a part of the cost shall be collected and paid over by
59 the prosecuting attorney to the sheriff of the county and
60 by him credited to the general county fund. No special
61 counsel shall be employed to institute or conduct such
62 suits. Any prosecuting attorney failing or refusing to
63 perform the duties required of him by this section, shall
64 forfeit the sum of one hundred dollars to be recovered
65 against him by the state tax commissioner in the name of
66 the state of West Virginia upon twenty days' notice by
67 motion in any court having jurisdiction. The amount col-
68 lected in any such suit after deducting ten per cent as
69 aforesaid, or the entire sum if collected by the tax com-
70 missioner without suit, shall be paid over to the sheriff
71 of the proper county and his receipt taken therefor. The
72 sheriff shall apportion such fund among the state, county,
73 district, school district, and municipalities which would
74 have been entitled to the taxes upon such property if
75 it had been assessed, in proportion to the rates of taxa-
76 tion for each such levying unit for the year in which the
77 judgment was obtained bears to the sum of rates for all.
78 When the list of property returned by the appraisers
79 of the estate of any deceased person shows an amount
80 greater than the last assessment list of such deceased
81 person next preceding the appraisal of his estate, it shall
82 be prima facie evidence that such deceased person re-
83 turned an imperfect list of his property: *Provided, how-*
84 *ever,* That any person liable for the tax or his personal
85 representative, may always be permitted to prove by
86 competent evidence that the discrepancy between such
87 assessment list and the appraisal of the estate is caused
88 by a difference of valuation returned by the assessor and
89 that made by the appraisers of the same property or by
90 property acquired after assessment, or that any property
91 enumerated in the appraisers' list had been otherwise
92 listed for taxation, or that it was not liable for taxation.
93 Any judgment recovered under this section shall be a lien,
94 from the time of the service of the notice, upon all real

95 estate and personal property of such defaulting taxpayer,
96 owned at the time or subsequently acquired, in preference
97 to any other lien.

Sec. 12. *Assessment of Corporate Property; Reports to*
2 *Assessor by Corporations.*—Each incorporated company,
3 foreign or domestic, having its principal office or chief
4 place of business in this state, or owning property subject
5 to taxation in this state, except railroad, telegraph and
6 express companies, telephone companies, pipe line, car
7 line companies and other public utility companies, bank-
8 ing institutions, national banking associations, building
9 and loan associations, federal savings and loan associa-
10 tions and industrial loan companies, shall annually, be-
11 tween the first day of the assessment year and the first
12 day of November, make a written report, verified by the
13 oath of the president or chief accounting officer, to the
14 assessor of the county in which its principal office or
15 chief place of business is situated, showing the following
16 items, viz: (a) The amount of capital authorized to be
17 employed by it; (b) the amount of cash capital paid on
18 each share of stock; (c) the amount of credits and invest-
19 ments other than its own capital stock held by it on said
20 date, with their true and actual value; (d) the quantity,
21 location and true and actual value of all of its real estate,
22 and the magisterial district or districts in which it is
23 located; (e) the kinds, quantity and true and actual value
24 of all its tangible property in each magisterial district in
25 which it is located.

26 The oath required for this section shall be substantially
27 as follows, viz:

28 State of West Virginia, County of _____, ss:
29 I, _____, president (treasurer or
30 manager) of (here insert name of corporation), do
31 solemnly swear (or affirm) that the foregoing is, to the
32 best of my knowledge and judgment, true in all respects;
33 that it contains a statement of all the real estate and
34 personal property, including credits and investments be-
35 longing to said corporation; that the value affixed to such
36 property is, in my opinion, its true and actual value, by
37 which I mean the price at which it would sell if volun-

38 tarily offered for sale on such terms as are usually em-
39 ployed in selling such property, and not the price which
40 might be realized at a forced or auction sale; and said
41 corporation has not, to my knowledge, during the sixty-
42 day period immediately prior to the first day of the
43 assessment year converted any of its assets into non-
44 taxable securities or notes or other evidence of indebted-
45 ness for the purpose of evading the assessment of taxes
46 thereon; so help me, God.

47

48 The officer administering such oath shall append there-
49 to the following certificate, viz:

50 Subscribed and sworn to before me by.....
51 this the.....day of....., 19.....

52

Sec. 13. *Entry of Corporate Property by Assessor.*—

2 Upon receiving the verified report required by the pre-
3 ceding section, the assessor, if satisfied with the correct-
4 ness thereof, shall assess the value of all the property of
5 such corporation liable to taxation, and enter the same
6 as follows, viz: All property in item (d) shall be entered
7 with its valuation in the land books of the county and
8 in the magisterial district in which the real estate is
9 situated; all property mentioned in item (c) shall, to-
10 gether with its valuation, be entered in the personal prop-
11 erty book of the county and in the magisterial district
12 wherein is the principal office or chief place of business
13 of such corporation, under the appropriate heads; and all
14 property mentioned in item (e) shall, together with its
15 valuation, be entered in the personal property book of
16 the county and in the magisterial district wherein such
17 property is on the first day of the assessment year; the
18 property mentioned in items (c), (d) and (e) shall con-
19 stitute all the property on which any such corporation
20 shall be liable to pay taxes. If a company has branches,
21 each branch shall be assessed separately in the county
22 and magisterial district where its principal office for trans-
23 acting its financial concerns is located; or, if there be no
24 such office, then in the magisterial district where its
25 operations are carried on. All locks and dams of naviga-

tion companies shall be assessed and taxed as real estate in the county and magisterial district wherein they are situated; and in case such locks and dams are located on any creek or river which is the dividing line between counties, or the dividing line between magisterial districts of the same county, one half of the value thereof shall be assessed in each of such counties or magisterial districts, as the case may be; when the property of an incorporated company is assessed as aforesaid, no individual shareholder therein shall be required to list or be assessed with his share, portion or interest in the capital stock of such corporation.

Sec. 15. *Assessment of Capital Used in Trade or Business by Natural Persons.*—The value of the capital used by any individual or firm not incorporated, in any trade or business taxable by law, shall be ascertained in the following manner: The owner, agent, or chief accountant of every such trade or business, except the business of agriculture, carried on in any county of the state, shall, annually, between the first day of the assessment year and the first day of November of the current year, make a written report as of the first day of the assessment year, to the assessor, verified by his affidavit, showing the following matters and things, viz: (a) The amount, the true and actual value and classification of all tangible personal property used in connection with such trade or business, otherwise than such as is regularly kept for sale therein, including chattels real; (b) the true and actual value and classification of all goods and property kept for sale and remaining unsold; (c) the amount in value of all credits arising out of any such business and remaining unpaid on that date, whether due or not, and whether in or out of the state; (d) the amount and true and actual value of all notes, bonds, bills, accounts receivable, stocks and other intangible property made by such person or firm whether in or out of the state, other than those hereinbefore specified; (e) the location, quantity, the true and actual value and classification of all real estate owned by such individuals or firm and used in such trade or business. The assessor shall, upon the receipt of such

29 report, properly verified, if he is satisfied with the cor-
30 rectness thereof, enter the real estate in the land book of
31 the county in the district wherein the same is situated,
32 and assess the same with taxes, if not otherwise assessed,
33 to the owner thereof; the personal property mentioned
34 in such report he shall enter in the personal property
35 book of his county for assessment with taxes as follows,
36 viz: Items (a) and (b) shall be entered in the magiste-
37 rial districts where they are for the greater part of the
38 year kept or located; and items (c), (d) and (e) shall
39 be entered under their appropriate headings, in the mu-
40 nicipality or magisterial district wherein the principal
41 place of business of such individual or firm is; if the
42 assessor is not satisfied with the correctness of such re-
43 port, he may proceed to ascertain a correct list of the
44 property on which such individual or firm is liable to be
45 assessed with taxes, and to value the same as in other
46 cases; the person making such report shall take and sub-
47 scribe an oath in substantially the following form:

48 I, _____, do solemnly swear (or affirm)
49 that the foregoing list is true and correct to the best of
50 my knowledge; that the value affixed to the property
51 therein listed I believe to be the true and actual value
52 thereof; that none of the assets belonging to (here state
53 the name of individual or firm) and used in the business
54 of (here describe the business) have to my knowledge,
55 since the first day of the assessment year, been converted
56 into nontaxable securities for the purpose of evading the
57 assessment of taxes thereon; so help me, God.

58

59 The officer administering said oath shall append thereto
60 the following certificate, viz:

61 Subscribed and sworn to before me by (here insert
62 affiant's name) this _____ day of _____, 19____.

63

2 *Sec. 19. Property Books; Time for Completing; Ex-*
3 *tension of Levies; Copies; to Whom Delivered.*—The
4 assessor shall complete his assessment and make up his
official copy of the land and personal property books in

5 time to submit the same to the board of equalization and
6 review not later than February first of the assessment
7 year. The assessor shall, as soon as practicable after the
8 levy is laid, extend the levies on the land and personal
9 property books, and shall forthwith make three copies of
10 the land and personal property books with the levies ex-
11 tended; one of such copies he shall deliver to the sheriff
12 not later than the seventh day of June, one copy he shall
13 deliver to the clerk of the county court not later than the
14 first day of July, and one copy he shall send to the state
15 auditor not later than the first day of July, and such
16 copies so delivered shall be official records of the respec-
17 tive officers. He may require the written receipt of each
18 of such officers for such copy. Before delivering any of
19 such copies the assessor shall make and subscribe the
20 following oath at the foot of each of them: I, _____,
21 assessor of the County of _____, do solemnly
22 swear, (or affirm) that in making the foregoing assess-
23 ment I have to the best of my knowledge and ability
24 pursued the law prescribing the duties of assessors and
25 that I have not been influenced in making the same by
26 fear, favor or partiality; so help me, God.

27

28

Assessor.

29 The officer administering the foregoing oath shall ap-
30 pend thereto a certificate in substantially the following
31 form:

32 Subscribed and sworn to before me, a _____
33 for the County of _____ and State of West Vir-
34 ginia, by _____, assessor for said
35 county, this the _____ day of _____, 19____.

36

Sec. 24. Review and Equalization by County Court.—

2 The county court shall annually, not later than the first
3 day of February, meet for the purpose of reviewing and
4 equalizing the assessment made by the assessor. It shall
5 not adjourn for longer than three days at a time until
6 this work is completed, and shall not remain in session
7 for a longer period than twenty-eight days. At the first

8 meeting, the assessor shall submit the property books for
9 the current year, which shall be complete in every partic-
10 ular, except that the levies shall not be extended. The
11 assessor and his assistants shall attend and render every
12 assistance possible in connection with the value of prop-
13 erty assessed by them. The court shall proceed to examine
14 and review the property books, and shall add on the books
15 the names of persons, the value of personal property and
16 the description and value of real estate liable to assess-
17 ment which was omitted by the assessor. They shall cor-
18 rect all errors in the names of persons, in the description
19 and valuation of property, and they shall cause to be
20 done whatever else may be necessary to make the valua-
21 tion comply with the provisions of this chapter. But in
22 no case shall any question of classification or taxability
23 be considered or reviewed. If the court determine that
24 any property or interest is assessed at more or less than
25 its true and actual value, it shall fix it at the true and
26 actual value. But no assessment shall be increased with-
27 out giving the property owner at least five days' notice
28 in writing, and signed by the president of the court, of
29 the intention to make the increase. Service upon the
30 property owner shall be sufficient, or upon his agent or
31 attorney in person, or if sent by registered mail to such
32 property owner, his agent, or attorney, at the last known
33 place of abode. If he be not found and have no known
34 place of abode, then notice shall be given by publication
35 once in some newspaper published in the county, at least
36 five days prior to the increase. When it is desired to in-
37 crease the entire valuation in any one district by a gen-
38 eral increase, notice shall be given by publication in two
39 newspapers published in the county, once each week for
40 two consecutive weeks, and completed at least five
41 days prior to the increase in valuation. When an in-
42 crease is made, the same valuation shall not again be
43 changed unless notice is again given as heretofore pro-
44 vided.

45 The clerk of the county court shall publish notice once
46 each week for three successive weeks before the meeting
47 of the county court in two newspapers of general circula-

48 tion published in the county, of opposite politics, if there
49 be any; if there be no newspaper published in the county,
50 notice shall be published in some newspaper of general
51 circulation. The notice shall state briefly the time, place
52 and general purpose of the meeting. The expense of
53 publication shall be paid out of the county treasury.

54 If any person fails to apply for relief at this meeting,
55 he shall have waived his right to ask for correction in
56 his assessment list for the current year, and shall not
57 thereafter be permitted to question the correctness of
58 his list as finally fixed by the county court, except on
59 appeal to the circuit court. After the county court com-
60 pletes the review and equalization of the property books,
61 a majority of the court shall sign a statement that it is
62 the completed assessment of the county for the year;
63 then the property books shall be delivered to the assessor
64 and the levies extended as provided by law.

Sec. 24-a. *Protest to Assessor; Appeal to Circuit Court.*—

2 At any time after property is returned for taxation and
3 up to and including the time the property books are be-
4 fore the county court for equalization and review, any
5 taxpayer may apply to the assessor for information re-
6 garding the classification and taxability of his property.
7 In case the taxpayer is dissatisfied with the classification
8 of property assessed to him or believes that such property
9 is exempt or otherwise not subject to taxation, he shall
10 file his objections in writing with the assessor. The as-
11 sessor shall decide the question by either sustaining the
12 protest and making proper corrections, or by stating, in
13 writing if requested, the reasons for his refusal. The
14 assessor may, and if the taxpayer requests, the assessor
15 shall, certify the question to the state tax commissioner
16 in a statement sworn to by both parties, or if the parties
17 are unable to agree, in separate sworn statements, giving
18 a full description of the property and any other informa-
19 tion which the tax commissioner may require.

20 The tax commissioner shall, as soon as possible on
21 receipt of the question, but in no case later than February
22 twenty-eighth of the assessment year, instruct the assessor
23 as to how the property shall be treated. The instructions

24 issued and forwarded by mail to the assessor shall be
25 binding upon him, but either the assessor or the tax-
26 payer may apply to the circuit court of the county for the
27 review of the question of classification and taxability in
28 the same fashion as is provided for appeals from the coun-
29 ty court in section twenty-five of this article. The tax
30 commissioner shall prescribe forms on which the afore-
31 said questions shall be certified and he shall have the
32 authority to pursue any inquiry and procure any informa-
33 tion which may be necessary for the disposition of the
34 issue.

Sec. 30. *Exception.*—Notwithstanding the provisions of
2 sections one, two, six, twelve, fifteen, nineteen, twenty-
3 four and twenty-four-a of this article, the provisions of
4 this article as of January first, one thousand nine hundred
5 sixty-one, shall govern assessment generally for the as-
6 sessment year one thousand nine hundred sixty-one.

Article 5. Assessment of Personal Property.

Section

1. What personal property taxable.
2. Personal property books.
3. Definitions.
4. In what district personalty assessed.
9. Ascertainment of property held under order of court.

Section 1. *What Personal Property Taxable.*—All per-
2 sonal property belonging to persons residing in this state,
3 whether such property be in or out of the state, and all
4 personal property in the state, though owned by per-
5 sons residing out of the state, shall be entered in the
6 personal property book, and be subject to equal and
7 uniform taxation, except as classified in section four,
8 article eight of this chapter, unless especially exempted
9 by law; but personal property of all classes, except as
10 hereinbefore provided, belonging to the residents of this
11 state, which is actually and permanently located in
12 another state, and by the laws of such other state is
13 subject to taxation and is actually taxed in such other
14 state, shall not be entered on the personal property book,
15 or be taxed in this state. But the shares of capital stock
16 owned by residents of this state in corporations actually

17 located in other states, and whose property is taxed by
18 the laws of such other state, shall not be required to be
19 listed for taxation. Any person who at any time before
20 the assessment year transfers by loan, deposit or gift, any
21 notes, bonds, bills and accounts receivable, stocks and
22 other intangible personal property, which are subject
23 to taxation to anyone, who does not return a list of taxa-
24 tion as of the day on which the assessment year com-
25 mences including such property, transfers, loans, de-
26 posits or gifts, if made with intention of evading taxa-
27 tion, shall be deemed and treated as illegal and fraudulent
28 and the assessor shall assess such property for taxation
29 to the party who makes such transfers, loans, deposits
30 or gifts as aforesaid.

Sec. 2. *Personal Property Books.*—In his personal
2 property books the assessor shall enter the names and
3 postoffice addresses of the owners of personal property
4 and of other persons liable to capitation tax, alphabetical-
5 ly arranged by districts, showing separately the values of:

6 (1) All tangible personal property employed exclu-
7 sively in agriculture including horticulture and grazing;

8 (2) All products of agriculture (including livestock)
9 while owned by the producer;

10 (3) All notes, bonds, bills and accounts receivable,
11 stocks and any other intangible personal property;

12 (4) The total of one, two and three;

13 (5) All other tangible personal property.

14 The tax commissioner may prescribe such itemization
15 and further information as he deems necessary. The
16 assessor shall make the same number of copies and extend
17 the levies in the same way as he does with the land book.

Sec. 3. *Definitions.*—The words "personal property", as
2 used in this chapter, shall include all fixtures attached
3 to land, if not included in the valuation of such land
4 entered in the proper land book; all things of value, mov-
5 able and tangible, which are the subjects of ownership;
6 all chattels, real and personal; all notes, bonds, and ac-
7 counts receivable, stocks and other intangible property.

8 "Agriculture" shall mean the cultivation of the soil,
9 including the planting and harvesting of crops and the
10 breeding and management of livestock.

11 "Horticulture" shall mean plant production of every
12 character except forestry.

13 "Grazing" shall mean the use of land for pasturage.

14 "Products of agriculture" shall mean those things the
15 existence of which follows directly from the activity of
16 agriculture, horticulture or grazing, including dairy,
17 poultry, bee and any other similar products, whether in
18 the natural form or processed as an incident to the market-
19 ing of the raw material.

20 "Producer" shall mean the person who is actually en-
21 gaged in the agriculture, horticulture and grazing which
22 gives existence and fruition to products of agriculture as
23 distinguished from the broker or middleman.

24 "While owned by the producer" shall mean while title
25 is in the producer as above defined.

26 "Employed exclusively" shall mean that the prepon-
27 derant, and the sole gainful use is for the designated
28 purpose.

Sec. 4. *In What District Personalty Assessed.*—Every
2 person required by law to list personal property for taxa-
3 tion shall list the tangible personal property in the
4 magisterial district wherein it is on the first day of the
5 assessment year, and chattels real in the magisterial dis-
6 trict wherein the land to which they relate is located;
7 and he shall list for taxation in the magisterial district
8 in which he resides the notes, bonds, bills and accounts
9 receivable, stocks and other intangible personal property
10 subject to taxation belonging to himself or under his
11 charge or control, whether the same, or the evidence
12 thereof be in or out of the state; but capital, and in-
13 tangible property (except real estate and chattels real)
14 employed in any trade or business (other than agricul-
15 ture) belonging to a company whether it is incorporated
16 or not, or to an individual, shall be assessed for taxation
17 in the magisterial district wherein the principal office

18 for the transaction of the financial concerns pertaining to
19 such trade or business is located; or, if there be no such
20 office, then in the district where the operations are car-
21 ried on. Goods and chattels and other tangible personal
22 property not exempt from taxation which may not be
23 assessed for taxation in the magisterial district where
24 the same were on the first day of the assessment year,
25 but which have been removed therefrom, shall be assessed
26 in the magisterial district where the same were on the
27 first day of the assessment year; but the assessment and
28 payment of taxes in any county or district in any year
29 shall exonerate the owner of such property in any other
30 county or district for such year: *Provided, however,* That
31 in cases of the assessment of leasehold estates a sum equal
32 to the valuations placed upon such leasehold estates shall
33 be deducted from the total value of the estate, to the end
34 that the valuation of such leasehold estate and the re-
35 mainder shall aggregate the true and actual value of the
36 estate.

Sec. 9. *Ascertainment of Property Held under Order of*
2 *Court.*—The assessor shall ascertain from each person in
3 his county, who acts under the order of any court as re-
4 ceiver or commissioner, the amount of all bonds, or other
5 evidence of debt, under his control, and the style of the
6 suit in which such fund belongs.

Article 6. Assessment of Public Service Corporations.

Section

1. Public service corporations; returns of property to board of public works.
9. Compelling such return; procuring information and tentative assessment by tax commissioner.
11. Valuation of property by board.
18. Payment of assessment by owner or operator.
22. Certification by auditor of amount chargeable to sheriff from levies against public service corporations; payment of amount due municipality.
23. Lien of taxes; notice of; collection by suit.
25. Exception.

Section 1. *Public Service Corporations; Returns of*
2 *Property to Board of Public Works.*—On or before the
3 first day of May in each year a return in writing to the
4 board of public works shall be delivered to the tax com-

5 missioner by the owner or operator of every railroad,
6 wholly or in part within this state; by the owner or
7 operator of every railroad bridge upon which a separate
8 toll or fare is charged; by the owner or operator of every
9 car or line of cars used upon any railroad within the
10 state for transportation or accommodation of freight or
11 passengers, other than such owners or operators as may
12 own or operate a railroad within the state; by the owner
13 or operator of every express company or express line,
14 wholly or in part within this state, used for the transpor-
15 tation by steam or otherwise of freight and other articles
16 of commerce; by the owner or operator of every pipe
17 line, wholly or in part within this state, used for the
18 transportation of oil or gas or water, whether such oil
19 or gas or water be owned by such owner or operator or
20 not, or for the transmission of electrical or other power,
21 or the transmission of steam or heat and power or of
22 articles by pneumatic or other power; and by the owner
23 or operator of every telegraph or telephone line, wholly
24 or in part within this state, except private lines not
25 operated for compensation; and by the owner and operator
26 of every gas company and electric lighting company fur-
27 nishing gas or electricity for lighting, heating or power
28 purposes; and hydro-electric companies for the genera-
29 tion and transmission of light, heat or power; water com-
30 panies furnishing or distributing water, and all other
31 public service corporations or persons engaged in public
32 service business whose property is located wholly or in
33 part within this state. The words "owner or operator",
34 as applied herein to railroad companies, shall include
35 every railroad company incorporated by or under the
36 laws of this state for the purpose of constructing and
37 operating a railroad, or of operating part of a railroad
38 within this state, whether such railroad or any part of it
39 be in operation or not; and shall also include every other
40 railroad company, or persons or associations of persons,
41 owning or operating a railroad or part of a railroad in
42 this state on which freight or passengers, or both, are
43 carried for compensation. The word "railroad", as used
44 herein includes every street, city, suburban or electric
45 or other railroad, or railway. The words "owner or

46 operator", as applied herein to express companies shall
47 include every express company incorporated by or under
48 the laws of this state, or doing business in this state,
49 whether incorporated or not, and any person or associa-
50 tion of persons, owning or operating any express com-
51 pany or express line upon any railroad or otherwise, do-
52 ing business partly or wholly within this state. Such re-
53 turn shall be signed and sworn to by such owner or
54 operator if a natural person, or, if such owner or operator
55 shall be a corporation, shall be signed and sworn to by
56 its president, vice president, secretary or principal ac-
57 counting officer. The return required by this section of
58 every such owner or operator shall cover the year ending
59 on the thirty-first day of December, next preceding, and
60 shall be made on forms prescribed by the board of public
61 works, which board is hereby invested with full power
62 and authority and it is hereby made its duty to prescribe
63 such forms as will require from any owner or operator
64 herein mentioned such information as in the judgment
65 of the board, may be of use to it in determining the true
66 and actual value of the properties of such owners or
67 operators.

2 *Sec. 9. Compelling Such Return; Procuring Informa-*
3 *tion and Tentative Assessment by Tax Commissioner.—*
4 If any owner or operator fail to make such return within
5 the time required by section one of this article, it shall
6 be the duty of the tax commissioner to take such steps
7 as may be necessary to compel such compliance, and to
8 enforce any and all penalties imposed by law for such
9 failure. The return delivered to the tax commissioner
10 shall be examined by him, and if it be found insufficient
11 in form or in any respect defective, imperfect or not in
12 compliance with law, he shall compel the person required
13 to make it to do so in proper and sufficient form, and in
14 all respects as required by law. If any such owner or
15 operator fail to make such return, the tax commissioner
16 shall proceed, in such manner as to him may seem best,
17 to obtain the facts and information required to be fur-
18 nished by such returns; and to this end the tax commis-
19 sioner may send for persons and papers, and may compel
 the attendance of any person and the production of any

20 paper necessary, in the opinion of said tax commissioner,
21 to enable him to obtain the information required for the
22 proper discharge of his duties under this section. The
23 tax commissioner shall arrange, collate and tabulate such
24 returns and all pertinent information and data contained
25 therein, such further evidence or information as may be
26 required by the tax commissioner of such owner or
27 operator, and all other pertinent evidence, information
28 and data he has been able to procure, upon suitable work
29 sheets, so that they may be conveniently considered, and
30 shall on or before the fifteenth day of September, lay
31 such returns and work sheets, together with his recom-
32 mendations in the form of a tentative assessment of the
33 property of each such owner or operator, before the board
34 of public works. And as soon as the tax commissioner
35 has completed the preparation of such work sheets and
36 tentative assessments, he shall notify the owner or oper-
37 ator affected thereby of the amount of such tentative
38 assessment by written notice deposited in the United
39 States post office, addressed to such owner or operator
40 at the principal office or place of business of such owner
41 or operator, and the tax commissioner shall retain in his
42 office true copies of such work sheets which shall be
43 available for inspection by any such owner or operator or
44 his duly authorized representative.

2 *Sec. 11. Valuation of Property by Board.*—Upon the
3 fifteenth day after giving the notices required by section
4 nine of this article, or as soon thereafter as reasonably
5 convenient but not later than the first day of October,
6 the board of public works shall proceed to assess and
7 fix the true and actual value of all property of such owner
8 or operator hereinbefore required to be returned, in each
9 county through which the railroad, car line, cars, express,
10 telegraph, telephone, or pipe line of such owner or oper-
11 ator runs, and in which any property to be assessed is
12 located. In ascertaining such value the board shall con-
13 sider the return, if any, made by the owner or operator,
14 and any return which may have been previously made
15 by such owner or operator, the work sheets and tentative
16 assessment recommended by the tax commissioner, such
 evidence or information as may be offered by such owner

17 or operator, such further evidence or information as may
18 be required by the board of such owner or operator, and
19 any other pertinent evidence, information and data, at a
20 regular meeting of the board held for such purpose at
21 least fifteen days after giving the notice required by
22 section nine of this article. Before any assessment shall
23 be made by the board, any and all evidence, information
24 and data considered by the board shall be available for
25 inspection by any such owner or operator or his duly
26 authorized representative, and an opportunity given to be
27 heard thereon. When the board of public works has
28 assessed any property hereby required to be returned,
29 and has determined the valuation thereof, such assess-
30 ment and valuation shall be entered of record in the book
31 of minutes of its proceedings, and shall be certified by
32 the secretary of the board to the auditor. Nothing in this
33 chapter contained shall be construed to require the as-
34 sessment by the board of public works of any part of a
35 railroad, telegraph, telephone or pipe line until such part
36 is so far completed as to be fit for use. But material held
37 by any railroad, telegraph, telephone or pipe line com-
38 pany shall be returned to the board of public works for
39 assessment as personal property. As soon as such assess-
40 ment is made, the secretary of the board shall notify the
41 owner or operator affected thereby of the amount thereof
42 by written notice deposited in the United States post
43 office, addressed to such owner or operator at the princi-
44 pal office or place of business of such owner or operator.
45 Such assessment and valuation shall be final and con-
46 clusive, unless the same be appealed from in the manner
47 following, within fifteen days after such notice is so de-
48 posited.

Sec. 18. *Payment of Assessment by Owner or Operator.*

2 —The auditor shall, as soon as possible after such assess-
3 ment is completed, make out and transmit by mail or
4 otherwise, to such owner or operator, a statement of all
5 taxes and levies so charged, and it shall be the duty of
6 such owner or operator, so assessed and charged, to pay
7 one half of the amount of such taxes and levies into the
8 treasury of the state by the first day of September and
9 the remaining one half by the first day of the following

10 March, subject to a deduction of two and one-half per
11 centum if the taxes be paid on or before the date due. If
12 such owner or operator fail to pay such taxes and levies
13 when due, interest thereon at the rate of nine per centum
14 per annum until paid shall be added, and the auditor shall
15 certify, after the date the second installment is due, to
16 the sheriff of each county, the amount of such taxes and
17 levies assessed within his county; and it shall be the duty
18 of every sheriff to collect and account for such taxes and
19 levies in the same manner as other taxes are levied or
20 collected and accounted for by him. The payment of
21 such taxes and levies by any such owner or operator shall
22 not prejudice or affect the right of such owner or operator
23 to obtain relief against the assessment or valuation of
24 its property in proceedings now pending or hereafter
25 brought under the provisions of section twelve of this
26 article, or in any suit, action or proceeding in which such
27 relief may be obtainable; and if under the provisions of
28 said section twelve or in any suit, action or proceeding,
29 it be ascertained that the assessment or valuation of the
30 property of such owner or operator is too high and the
31 same is accordingly corrected, it shall be the duty of the
32 auditor of the state to issue to the owner or operator a
33 certificate showing the amount of taxes and levies which
34 have been overpaid, and such certificate shall be re-
35 ceivable thereafter for the amount of such overpayment
36 in payment of any taxes and levies assessed against the
37 property of such owner or operator, its successors or
38 assigns. It shall likewise be the duty of said auditor to
39 certify to the county court, school districts and munici-
40 palities, the amounts of the respective overpayments dis-
41 tributable to such counties, school districts and munici-
42 palities. All moneys received by the auditor under the
43 provisions of this section shall be transmitted to the
44 several counties within twenty days from receipt thereof.

Sec. 22. *Certification by Auditor of Amount Chargeable
2 to Sheriff from Levies against Public Service Corpora-
3 tions; Payment of Amount Due Municipality.*—The audi-
4 tor shall certify to the county court and the county super-
5 intendent of schools of every such county, on or before
6 the first day of February in each year, the respective

7 amounts with which the sheriff thereof is chargeable on
8 account of the various levies upon the property of such
9 owner or operator. The amount so paid in for each mu-
10 nicipal corporation shall, as soon as received by the au-
11 ditor, be paid over to the sheriff, or the treasurer of such
12 municipal corporation, or to such other officer of the
13 municipality as the council may designate, and the auditor
14 shall report such payment to the council. But the failure
15 of the clerk of any county court, or the secretary of any
16 board of education, or the proper officer of any municipal
17 corporation, to certify the levies to the auditor within
18 the time herein prescribed shall not invalidate or prevent
19 the assessment required by this article, but the auditor
20 shall make the assessment and proceed to collect or cer-
21 tify the same to the sheriff as soon as practicable after
22 he shall have obtained the information necessary to make
23 such assessment.

Sec. 23. *Lien of Taxes; Notice of; Collection by Suit.*—

2 The amount of taxes and levies assessed under this article
3 shall constitute a debt due the state or county, district
4 or municipal corporation entitled thereto, and shall be
5 a lien on all of the property and assets of the taxpayer
6 within the state. The lien shall attach as of the thirty-first
7 day of December following the commencement of the as-
8 sessment year, and shall be prior to all other liens and
9 charges. The auditor shall, between the first and fifteenth
10 day of May of each year, prepare a list of the taxpayers de-
11 linquent in the payment of such taxes and levies, setting
12 forth their respective addresses and the amount of state,
13 county, district and municipal taxes due from each, which
14 said list shall be certified by the auditor to the board of
15 public works and filed in the office of the secretary of
16 state. The secretary of state shall preserve the list in his
17 office, and a certificate from him that any taxpayer men-
18 tioned in such list is delinquent in the amount of taxes
19 assessed under this article shall be prima facie evidence
20 thereof. Within ten days after the filing of such list, the
21 secretary of state shall give written notice of such de-
22 linquency by registered mail to each of such delinquent
23 taxpayers at his, or its, last known postoffice address;
24 and upon the failure of any such delinquent taxpayer to

25 pay said taxes within thirty days from mailing of such
26 notice, it shall be the duty of the attorney general to
27 enforce the collection of such taxes and levies, and for
28 that purpose he may distrain upon any personal property
29 of such delinquent taxpayer, or a sufficient amount there-
30 of to satisfy said taxes, including accrued interest, pen-
31 alties and costs.

32 The attorney general may also enforce the lien created
33 by this section on the real estate of such delinquent tax-
34 payer by instituting a suit, or suits, in equity in the cir-
35 cuit court of Kanawha county, in the name of the state,
36 in which such delinquent taxpayers shall be made de-
37 fendants. In the bill filed in any such suit it shall be
38 sufficient to allege that the defendant or defendants have
39 failed to pay the taxes hereunder and that each of them
40 justly owes the amount of property taxes, levies and
41 penalties stated therein, which amount shall be computed
42 up to the first day of the month in which the bill was
43 filed. No such defendant shall plead that the secretary
44 of state failed to give notice as prescribed by this section.
45 If, upon the hearing of such suit, it shall appear to the
46 court that any defendant has failed to pay such taxes
47 and accrued penalties, the court shall enter a decree
48 against such defendant for the amount due, and if the
49 decree be not paid within ten days after made, the court
50 shall enter a decree directing a sale of the real estate
51 subject to said lien, or so much thereof as may be neces-
52 sary to satisfy said taxes, including interest, penalties and
53 costs. When two or more taxpayers are included in one
54 suit, the court shall apportion the cost thereof among
55 them as it may deem just.

Sec. 25. *Exception.*—Notwithstanding the provisions of
2 sections one, nine, eleven, eighteen, twenty-two and
3 twenty-three of this article, the provisions of this article
4 as of January first, one thousand nine hundred sixty-one,
5 shall govern the assessment of public service corporations
6 for the assessment year beginning December thirty-first,
7 one thousand nine hundred sixty.

Article 8. Levies.**Section**

5. Classification of property for levy purposes.
- 6-c. Maximum levies on each classification by county boards of education; order of levy; exceeding levy for school bond issues.
8. Levies by board of public works; certification.
9. Meetings of local levying bodies.
10. Levy estimate by county court; certification to tax commissioner and publication.
- 10-a. Adjourned session of county court to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness, second for indebtedness not bonded, then for current expenses.
12. Levy estimate by board of education; certification and publication.
- 12-a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, second for permanent improvement fund, then for current expenses.
14. Levy estimate by municipality; certification to tax commissioner and publication.
- 14-a. Adjourned session of municipal governing body to hear objections; approval of levies by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, then for current expenses.
33. Exception.

Section 5. Classification of Property for Levy Purposes.

- 2 —For the purpose of levies, property shall be classified as
- 3 follows:
- 4 Class I. All tangible personal property employed ex-
- 5 clusively in agriculture, including horticulture and graz-
- 6 ing;
- 7 All products of agriculture (including livestock) while
- 8 owned by the producer;
- 9 All notes, bonds, bills and accounts receivable, stocks
- 10 and any other intangible personal property;
- 11 Class II. All property owned, used and occupied by
- 12 the owner exclusively for residential purposes;
- 13 All farms, including land used for horticulture and
- 14 grazing, occupied and cultivated by their owners or bona
- 15 fide tenants;
- 16 Class III. All real and personal property situated out-
- 17 side of municipalities, exclusive of classes I and II;
- 18 Class IV. All real and personal property situated in-
- 19 side of municipalities, exclusive of classes I and II.

Sec. 6-c. *Maximum Levies on Each Classification by*
2 *County Boards of Education; Order of Levy; Exceeding*

3 *Levy for School Bond Issues.*—County boards of educa-
4 tion are hereby authorized to lay not in excess of the
5 following maximum levies, for the purposes specified and
6 in the following order:

7 (1) With respect to a magisterial, independent or other
8 school district existing in a county prior to May twenty-
9 second, one thousand nine hundred thirty-three, or any
10 special taxing district for which the board of education
11 is required to lay the levy, for the payment of (a) interest
12 and sinking fund requirements for bonded indebtedness
13 incurred prior to the adoption of the tax limitation amend-
14 ment; and (to the extent not so required), (b) other
15 legally incurred contractual indebtedness not bonded, if
16 any, incurred prior to the adoption of the tax limitation
17 amendment as follows: On class I property, thirty-five
18 one hundredths of one cent; on class II property, seven
19 tenths of one cent; and on classes III and IV property,
20 one and four-tenths cents.

21 (2) For either or both of (a) the permanent improve-
22 ment fund, and (b) the payment of interest and sinking
23 fund requirements for bonded indebtedness incurred sub-
24 sequent to the adoption of the tax limitation amendment,
25 as follows: On class I property, one and five-tenths cents;
26 on class II property, three cents; and on classes III and
27 IV property, six cents.

28 (3) For the general current expenses of schools as fol-
29 lows: On class I property, twenty-one and one-tenth cents;
30 on class II property, forty-two and two-tenths cents; and
31 on classes III and IV property, eighty-four and four-
32 tenths cents. But if the tax commissioner has approved
33 the levy of an additional amount for the general current
34 expenses of the county as authorized by section six-b,
35 subsection three, the amount of the levy authorized for
36 boards of education by this subsection shall be reduced
37 by the tax commissioner to that extent.

38 If the rates of levy under (2) above are not required in
39 whole or in part for the purposes for which they are allo-
40 cated by this section, the county board of education may,
41 with the prior written approval of the state board of
42 school finance, created by section three, article nine-b,

chapter eighteen of the code, as amended, lay such rates of levy or portion thereof not so required, for the general current expenses of schools: *Provided, however,* That if the rates of levy under paragraph (3) of this section are not sufficient for the purposes for which they are allocated, the county board of education may, with the prior written approval of the state tax commissioner, lay such additional rates of levy, or portion thereof, as are surrendered by the county court under paragraph (3), section six-b of this article: *Provided further,* That a county board of education shall be required to levy outside the levy rates hereinabove provided sufficient to pay the principal and interest requirements on bonds now or hereafter issued by any school district, not exceeding in the aggregate five per centum of the assessed value of all taxable property in the county school district, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness, in the manner provided by the "Better Schools Amendment", as ratified.

Sec. 8. Levies by Board of Public Works; Certification.

—The state board of public works shall, on or before April fifteenth of each year, levy on the one hundred dollars' valuation of each class of property subject to taxation in the state the rates fixed by section six-a of this article. The board shall forthwith certify its action to the state tax commissioner and to the assessor of each county.

Sec. 9. Meetings of Local Levying Bodies.—Each local

levying body shall hold a meeting or meetings between the seventh and twenty-eighth days of March for the transaction of business generally and particularly for the business herein required.

Sec. 10. Levy Estimate by County Court; Certification

to Tax Commissioner and Publication.—The county court shall, at the session provided for in section nine of this article, ascertain the fiscal condition of the county, and make an itemized statement setting forth:

- (1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for

9 the year upon the county as a whole and upon any dis-
10 trict of the county for which the levies are laid by the
11 county court;

12 (2) The interest, sinking fund and amortization require-
13 ments for the current fiscal year of bonded indebtedness
14 legally incurred upon a vote of the people, as provided
15 by law, prior to the adoption of the tax limitation amend-
16 ment, owing by the county as a whole and by any
17 district;

18 (3) Other contractual indebtedness not bonded, legally
19 incurred prior to the adoption of the tax limitation amend-
20 ment, owing by the county as a whole and such debts
21 owing by any district;

22 (4) All other expenditures to be paid out of the receipts
23 for the current fiscal year, with proper allowance for
24 delinquent taxes, exonerations and contingencies;

25 (5) The total amount necessary to be raised for each
26 fund by the levy of taxes for the current year;

27 (6) The proposed county levy in cents on each one
28 hundred dollars' assessed valuation of each class of prop-
29 erty for the county and its subdivisions;

30 (7) The proposed levy in each district for district funds,
31 if any, on each one hundred dollars' valuation of each
32 class of property;

33 (8) The separate and aggregate amounts of the real,
34 personal and public utility properties in each class in the
35 county and in each subdivision thereof.

36 A copy of the statement, duly certified by the clerk of
37 the court, shall be forwarded to the tax commissioner,
38 and the clerk shall publish the statement forthwith. The
39 session shall then stand adjourned until the third Tuesday
40 in April, at which time it shall reconvene.

2 *Sec. 10-a. Adjourned Session of County Court to Hear*
3 *Objections to Proposed Levies; Approval of Estimate and*
4 *Levy by Tax Commissioner; First Levy for Bonded In-*
5 *debtedness, Second for Indebtedness Not Bonded, Then*
6 *for Current Expenses.*—The county court shall, when it
7 reconvenes upon the third Tuesday in April, hear and
consider any objections made orally or in writing by the

8 prosecuting attorney, by the tax commissioner or his rep-
9 resentative, or by any taxpayer of the county, to the
10 estimate and proposed levy or to any item thereof. The
11 court shall enter of record any objections so made and the
12 reasons and grounds therefor.

13 The failure of any officer or taxpayer to offer objections
14 shall not preclude him from pursuing any legal remedy
15 necessary to correct any levy made by any fiscal body
16 under this article.

17 The court, after hearing objections, shall reconsider
18 the proposed original estimate and proposed rates of levy,
19 and if the objections are well taken, shall correct the
20 estimate and levy. No such estimate and levy, however,
21 shall be entered until the same shall have first been ap-
22 proved, in writing, by the tax commissioner. When the
23 same shall have been approved by the tax commissioner,
24 the clerk shall then enter the estimate and levy, together
25 with the order of the court approving them and the
26 written approval of the tax commissioner thereof, in the
27 proper record book.

28 The county court shall then levy as many cents per
29 hundred dollars' assessed valuation on each class of prop-
30 erty in the county or its subdivisions, as the case may be,
31 as will produce the amounts, according to the last assess-
32 ments, shown to be necessary by the statement in the
33 following order:

34 First, for the bonded debt and for the contractual debt
35 not bonded, if any, of the county incurred prior to the
36 adoption of the tax limitation amendment;

37 Second, for the bonded debt and for the contractual
38 debt not bonded, if any, of any magisterial or special tax-
39 ing district for which the county court is required to lay
40 the levy;

41 Third, for general current expenses of the county.

42 The rates of levy for each purpose shall not exceed the
43 amounts fixed by section six-b unless another rate is
44 authorized by the tax commissioner in accordance with
45 this article. When less than the maximum levies are
46 imposed, the levies on each class of property shall be in
47 the same proportions as the maximums authorized.

Sec. 12. *Levy Estimate by Board of Education; Certification and Publication.*—Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of the code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

(1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May twenty-second, one thousand nine hundred thirty-three, prior to the adoption of the tax limitation amendment;

(3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May twenty-second, one thousand nine hundred thirty-three, prior to the adoption of the tax limitation amendment, owing by such district;

(4) The amount to be levied for the permanent improvement fund;

(5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

(6) The amount of such total to be raised by the levy of taxes for the current fiscal year;

(7) The proposed rate of levy in cents on each one hundred dollars' assessed valuation of each class of property;

(8) The separate and aggregate amounts of the assessed valuation of real, personal, and public utility property within each class.

The secretary of the board shall forward immediately a certified copy of the statement to the tax commissioner and shall publish the statement forthwith. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene.

Sec. 12-a. *Adjourned Session of Board of Education to Hear Objections to Proposed Levies; Approval of Estimate and Levy by Tax Commissioner; First Levy for Bonded Indebtedness and Indebtedness Not Bonded, Second for Permanent Improvement Fund, Then for Current Expenses.*—Each board of education when it reconvenes on the third Tuesday in April shall proceed in a manner similar in all respects to that provided for in section ten-a of this article. The board shall not finally enter any levy until it has been approved in writing by the tax commissioner. After receiving such approval, the board shall enter the statement as approved in its record of proceedings, together with the written approval.

The board shall levy as many cents per hundred dollars' assessed valuation on each class of property in the county or in the area of a pre-existing school district, as the case may be, as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of any school district of the county existing prior to May twenty-second, one thousand nine hundred thirty-three, and incurred prior to the adoption of the tax limitation amendment;

Second, for the permanent improvement fund;

Third, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by section six-c unless another rate is authorized by the tax commissioner in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

Sec. 14. *Levy Estimate by Municipality; Certification to Tax Commissioner and Publication.*—A municipal governing body shall, at the session provided for in section nine, ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current

8 fiscal year except from the levy of taxes to be made for
9 the year;

10 (2) The interest, sinking fund and amortization re-
11 quirements for the fiscal year of bonded indebtedness,
12 legally incurred upon a vote of the people as provided by
13 law, prior to the adoption of the tax limitation amend-
14 ment;

15 (3) Other contractual indebtedness, not bonded, legal-
16 ly incurred prior to the adoption of the tax limitation
17 amendment, owing by the municipality;

18 (4) All other expenditures to be paid out of the
19 receipts of the municipality for the current fiscal year
20 with proper allowance for delinquent taxes, exonerations,
21 and contingencies;

22 (5) The total amount necessary to be raised by the
23 levy of taxes for the current fiscal year;

24 (6) The proposed rate of levy in cents on each one
25 hundred dollars' assessed valuation of each class of
26 property; and

27 (7) The separate and aggregate assessed valuations of
28 real, personal and public utility property in each class
29 in the municipality.

30 The recording officer of the municipality shall forward
31 immediately a certified copy of the statement to the tax
32 commissioner, and shall publish the statement forthwith.
33 The session shall then stand adjourned until the third
34 Tuesday in April, at which time it shall reconvene.

Sec. 14-a. *Adjourned Session of Municipal Governing
2 Body to Hear Objections; Approval of Levies by Tax
3 Commissioner; First Levy for Bonded Indebtedness and
4 Indebtedness Not Bonded, Then for Current Expenses.—*
5 The governing body of a municipality when it reconvenes
6 on the third Tuesday in April shall proceed in a manner
7 similar in all respects to that provided for in section ten-a
8 of this article.

9 The governing body shall not finally enter any levy
10 until it has been approved in writing by the state tax
11 commissioner. After receiving such approval, the gov-

12 erving body shall enter the statement as approved in its
13 record of proceedings, together with the written approval.

14 The governing body shall levy as many cents per
15 hundred dollars' assessed valuation on each class of
16 property in the municipality as will produce the amounts,
17 according to the last assessment, shown to be necessary
18 by the statement in the following order:

19 First, for the bonded debt and for the contractual debt
20 not bonded, if any, of the municipality incurred prior to
21 the adoption of the tax limitation amendment;

22 Second, for general current expenses.

23 The rates of levy for each purpose shall not exceed the
24 amounts fixed by section six-d unless another rate is
25 authorized by the tax commissioner in accordance with
26 this article. When less than the maximum levies are
27 imposed, the levies on each class of property shall be in
28 the same proportions as the maximums authorized.

Sec. 33. *Exception.*—Notwithstanding the provisions of
2 sections eight, nine, ten, ten-a, twelve, twelve-a, fourteen
3 and fourteen-a of this article, the provisions of this article
4 as of January first, one thousand nine hundred sixty-one,
5 shall govern levies for the fiscal year beginning July first,
6 one thousand nine hundred sixty-one; nor shall the powers
7 heretofore given the board of park commissioners of the
8 city of Huntington, by chapter twenty-six, acts of the
9 Legislature, one thousand nine hundred twenty-five, and
10 subsequent amendments thereto be in any manner im-
11 paired by the provisions of this article, and further that
12 levies to be laid by said board of park commissioners of
13 the city of Huntington be laid at the same time and in
14 the manner herein provided.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

Article

1. **Accrual and Collection of Taxes.**
2. **Delinquency and Methods of Enforcing Payment.**
3. **Sale of Land for Taxes.**
4. **Sale of Lands for School Fund.**

Article 1. Accrual and Collection of Taxes.**Section**

2. Lien for real property taxes.
3. Accrual; time for payment; interest on delinquent taxes.
6. When collection to commence.
8. Notice of time and place for payment.
14. Payment by sheriff into state treasury.
18. Exception.

Section 2. *Lien for Real Property Taxes.*—There shall be a lien on all real property for the taxes assessed thereon, and for the interest and other charges upon such taxes, at the rate and for the period provided by law, which lien shall attach on the first day of July, one thousand nine hundred sixty-one, and each July first thereafter for the taxes payable for the ensuing fiscal year.

Sec. 3. *Accrual; Time for Payment; Interest on Delinquent Taxes.*—All current taxes assessed on real and personal property may be paid in two installments. The first installment shall be payable on September first of the year for which the assessment is made, and shall become delinquent on October first; the second installment shall be payable on the first day of the following March and shall become delinquent on April first. Taxes paid on or before the date when they are payable, including both first and second installments, shall be subject to a discount of two and one-half per cent. If taxes are not paid on or before the date on which they become delinquent, including both first and second installments, interest at the rate of nine per cent per annum shall be added from the date they become delinquent until paid.

Sec. 6. *When Collection to Commence.*—The sheriff shall commence collection of current taxes on the fifteenth day of July, or as soon thereafter as he receives copies of the land and personal property books.

Sec. 8. *Notice of Time and Place for Payment.*—The sheriff may give notice by posting at not less than six public places in each magisterial district, for at least ten days before the time appointed, that between July fifteenth and August thirty-first he will attend at one or more of the most public and convenient places in each district, such places to be specified in the notice, for the

8 purpose of receiving taxes due by the people residing
9 or paying taxes in such district. The notice shall also
10 state that those who pay the first installment of their
11 taxes on or before September first will be entitled to a
12 discount of two and one-half per cent. Like notice may
13 be given that between January fifteenth and February
14 twenty-eighth he will again appear in each district for
15 the collection of taxes, and that those who pay their
16 second installment on or before March first will be en-
17 titled to the same discount. Failure of the sheriff to post
18 such lists shall not impair the right of the state to collect
19 such taxes.

20 The county court of any county may order that the
21 above notice shall also be given by advertisement. Such
22 an order, once entered, shall continue in effect until
23 rescinded by the county court. Upon entry of such order,
24 the sheriff shall, besides posting as required above, insert
25 the proper notice in two newspapers of opposite politics,
26 if such there be in the county, once a week for two
27 successive weeks next preceding the fifteenth day of July
28 or the fifteenth day of January as the case may be. For
29 every failure so to advertise, the sheriff shall forfeit one
30 hundred dollars.

Sec. 14. *Payment by Sheriff into State Treasury.*—All
2 taxes collected for the state shall be paid into the state
3 treasury by the sheriff as follows: On or before November
4 fifteenth, all such taxes collected before November first;
5 on or before April fifteenth, all collected before April
6 first. Every sheriff who fails to make any payment when
7 due shall be charged with interest at the rate of twelve
8 per cent per annum.

Sec. 18. *Exception.*—Notwithstanding the provisions of
2 sections two, three, six, eight and fourteen of this article,
3 the provisions of this article as of January first, one
4 thousand nine hundred sixty-one, shall govern the accrual
5 and collection of taxes levied upon assessed values as of
6 January first, one thousand nine hundred sixty-one, or
7 prior years.

Article 2. Delinquency and Methods of Enforcing Payment.**Section**

4. Abatement of distress.
- 10-a. Notice of delinquency.
11. Delinquent lists; oath.
13. Publication and posting of delinquent lists.
14. Correction of delinquent lists by county court; certification to auditor; recordation.
19. Exception.

Section 4. *Abatement of Distress.*—Whenever by mistake taxes are assessed wholly to one person or estate on a tract or lot of land, part of which has become the freehold of another, by a title recorded before July first of the assessment year, the goods and chattels of the party or estate so assessed shall not be liable to distraint for more than a due proportion of such taxes.

Sec. 10-a. *Notice of Delinquency.*—On or after April first of each year, the sheriff may prepare and insert twice in two newspapers of opposite politics, if such there be published in the county, a notice stating in effect that the taxes assessed for the previous year have become delinquent, and that unless paid by April thirtieth will be included for publication in the forthcoming delinquent lists. Of the costs of publishing this notice, the county court shall pay an amount not to exceed the regular commercial rate for a display advertisement of twelve column inches.

Sec. 11. *Delinquent Lists; Oath.*—The sheriff, after ascertaining which of the taxes assessed in his county are delinquent, shall, on or before the first day of May next succeeding the year for which the taxes were assessed, prepare the following delinquent lists, arranged by districts and alphabetically by name of the person charged, and showing in respect to each the amount of taxes remaining delinquent on April thirtieth: (1) A list of property in the land book improperly entered or not ascertainable. (2) A list of other delinquent real estate. (3) A list of all other delinquent taxes.

The sheriff on returning each list shall, at the foot thereof, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

16 I, _____, sheriff (or deputy sheriff or collec-
17 tor) of the County of _____, do swear that the
18 foregoing list is, to the best of my knowledge and belief,
19 complete and accurate, and that I have received none of
20 the taxes listed therein.

21 Except for the oath, the tax commissioner shall pre-
22 scribe the form of the delinquent lists.

Sec. 13. *Publication and Posting of Delinquent Lists.*—

2 A copy of each of the delinquent lists shall be posted at
3 the front door of the courthouse of the county at least
4 two weeks before the session of the county court at which
5 they are to be presented for examination. At the same
6 time a copy of each list shall be printed once in two
7 newspapers of opposite politics, if such there be in the
8 county, and the costs of printing, not to exceed twenty-
9 five cents per item for each insertion in each newspaper,
10 shall be paid out of the county treasury; but in such
11 publication, only the aggregate amount of the taxes owed
12 by each person need be published. To cover the costs of
13 preparing, publishing and posting the delinquent lists,
14 a charge of one dollar shall be added to the taxes and
15 interest already due on each item listed.

16 Any person, whose taxes were delinquent on May first,
17 may have his name removed from the delinquent lists
18 prior to the time the same is delivered to the newspapers
19 for publication, by paying to the sheriff the full amount
20 of the taxes and costs owed by such person at the date of
21 such redemption. The sheriff shall collect a charge of
22 only fifty cents if redemption is made before the list is
23 delivered for publication. Costs collected by the sheriff
24 hereunder which are not expended for publication shall
25 be paid into the general county fund.

Sec. 14. *Correction of Delinquent Lists by County*

2 *Court; Certification to Auditor; Recordation.*—The sheriff
3 shall on or before June fifteenth present the delinquent
4 lists to the county court for examination. The court
5 having become satisfied that the lists are correct, or
6 having corrected them if erroneous, shall direct the clerk
7 of the court to certify a copy of each list to the auditor

8 not later than July first. The original lists shall be pre-
9 served by the clerk in his office, and the list of delinquent
10 real estate shall be recorded in a permanent book to be
11 kept by him for that purpose.

Sec. 19. *Exception.*—Notwithstanding the provisions
2 of sections four, ten-a, eleven, thirteen and fourteen of
3 this article, the provisions of this article as of January
4 first, one thousand nine hundred sixty-one, shall govern
5 delinquency and methods of enforcing payment of taxes
6 levied upon assessed values as of January first, one thou-
7 sand nine hundred sixty-one, or prior years.

Article 3. Sale of Land for Taxes.

Section

2. Second publication and posting of list of delinquent real estate;
notice.
4. Sale by sheriff.
5. Suspension from sale.
14. Auditor to report redemptions to county officers; disposition of re-
demption money; credit of state taxes to proper fund.
44. Exception.

Section 2. *Second Publication and Posting of List of*
2 *Delinquent Real Estate; Notice.*—On or before September
3 tenth of each year, the sheriff shall prepare a second list
4 of delinquent lands, which shall include all real estate in
5 his county remaining delinquent as of September first,
6 together with a notice of sale, in form or effect as follows:

7 Notice is hereby given that the following described
8 tracts or lots of land or undivided interests therein in the
9 County of _____, which are delinquent for the
10 nonpayment of taxes for the year (or years) 19____, will
11 be offered for sale by the undersigned sheriff (or collec-
12 tor) at public auction at the front door of the courthouse
13 of the county, between the hours of ten in the morning
14 and four in the afternoon, on the _____ day
15 of _____, 19____.

16 Each unredeemed tract or lot, or each unredeemed part
17 thereof or undivided interest therein, or so much thereof

18 as may be necessary, will be sold for the amount due
 19 thereon, as set forth in the following table:

Name of person charged with taxes	Quantity of land	Local description	Total amount of taxes, interest and charges due to date of sale
---	---------------------	----------------------	--

20 Any of the aforesaid tracts or lots, or part thereof or an
 21 undivided interest therein, may be redeemed by the pay-
 22 ment to the undersigned sheriff (or collector) before sale,
 23 of the total amount of taxes, interest and charges due
 24 thereon up to the date of redemption.

25 Given under my hand this _____ day of
 26 _____, 19____.

27 _____ Sheriff (or collector)

28 The sheriff shall publish the list and notice, once a
 29 week for four successive weeks prior to the sale date
 30 fixed in the notice, in two newspapers of opposite politics,
 31 if such there be in the county, and the costs of printing,
 32 not to exceed forty cents per item for each insertion
 33 in each newspaper, shall be paid out of the county
 34 treasury. He shall also post a copy of such list and notice
 35 at the front door of the courthouse at least four weeks
 36 before the sale. If there is no newspaper published in
 37 the county, or if no such newspaper will publish the list
 38 and notice for the compensation provided by law, then
 39 the sheriff shall also post a copy of the notice, but not of
 40 the delinquent list, at some public place in each magis-
 41 terial district at least twenty days before the sale. In
 42 such case, the notice shall also state that the delinquent
 43 list has been posted at the front door of the courthouse.

44 To cover the costs of preparing, publishing and posting
 45 the delinquent list, a charge of two dollars and fifty cents
 46 shall be added to the taxes, interest and charges already
 47 due on each item listed. The sum of the taxes, interest to
 48 the date of sale, and other charges shall be stated in the
 49 list as the total amount due.

50 Any person, whose taxes were delinquent on September
 51 first, may have his name removed from the delinquent
 52 list prior to the time the same is delivered to the news-
 53 paper or newspapers for publication by paying to the

54 sheriff the full amount of taxes and costs owed by such
55 person at the date of such redemption. In such case, the
56 sheriff shall include but fifty cents of the costs provided
57 in this section in making such redemption. Costs col-
58 lected by the sheriff hereunder which are not expended
59 for publication shall be paid into the general county fund.

Sec. 4. *Sale by Sheriff.*—Each unredeemed tract or lot,
2 or each unredeemed part thereof or undivided interest
3 therein, or so much of any unredeemed tract or part
4 thereof as may be necessary, shall be sold by the sheriff
5 at public auction, between the hours of ten in the morn-
6 ing and four in the afternoon on the third Monday in
7 October, for the total amount of taxes, interest and
8 charges then due. If the sale is not completed on that day,
9 it shall be continued from day to day between the same
10 hours until all the land has been disposed of.

Sec. 5. *Suspension from Sale.*—Whenever it shall ap-
2 pear to the sheriff that any real estate included in the
3 list has been sold previously for taxes and not redeemed,
4 or ought not to be sold for the amount stated therein, he
5 shall suspend the sale thereof and report his reasons
6 therefor to the county court. If the court finds that the
7 real estate ought not to be sold, it shall so order; but if
8 the court finds that the real estate ought to be sold for
9 the amount stated, or for a greater or less amount, it shall
10 order the sheriff to include such real estate in his next
11 September list, unless sooner redeemed.

Sec. 14. *Auditor to Report Redemptions to County
2 Officers; Disposition of Redemption Money; Credit of
3 State Taxes to Proper Fund.*—The auditor shall report
4 monthly to the sheriff, the assessor and the clerk of the
5 county court of each county all land in such county which
6 was redeemed in his office during the preceding month.
7 The assessor shall enter the fact of such redemption in
8 the land book in his office. The clerk shall file and index
9 the report in a separate volume provided for the purpose.
10 Between August fifteenth and August thirty-first of
11 each year, the auditor shall report to the sheriff of each
12 county for inclusion in his next September delinquent

13 list all tracts of land redeemed from the auditor, which
14 after purchase by the state have been reported to him by
15 the sheriff as suspended from sale, if the taxes for the year
16 or years of suspension were not collected by the auditor.
17 The sheriff shall be charged with such taxes and shall ac-
18 count for them as is required in the case of current taxes.
19 Instead of making this report, the auditor may collect the
20 taxes due for the year or years of suspension. Upon
21 collection thereof he shall issue a second certificate of
22 redemption, and such certificate shall be a release of the
23 state's lien for such taxes.

24 The auditor shall each month draw his warrant upon
25 the treasury, payable to the sheriff of each county, for
26 that part of the taxes, interest and charges received by
27 him upon the redemption of the property included in his
28 report, which was owing to any of the taxing units in
29 such county. The sheriff shall account for and pay over
30 such money as if it had been paid to him for redemption
31 before sale.

32 Upon collection of delinquent taxes due the state, the
33 auditor shall credit them to the proper fund.

Sec. 44. *Exception.*—Notwithstanding the provisions of
2 sections two, four, five and fourteen of this article, the
3 provisions of this article as of January first, one thousand
4 nine hundred sixty-one, shall govern the sale of land for
5 taxes levied upon assessed values as of January first, one
6 thousand nine hundred sixty-one, or prior years.

Article 4. Sale of Lands for School Fund.

Section

9. Auditor to certify list of lands to be sold; lands heretofore certified made irredeemable and subject to transfer or sale.

Section 9. *Auditor to Certify List of Lands to Be Sold;*
2 *Lands Heretofore Certified Made Irredeemable and Sub-*
3 *ject to Transfer or Sale.*—On or after the first day of
4 May and on or before the first day of October of each
5 year, the auditor shall certify to the circuit court of each
6 county a list of all lands in the county subject to sale
7 under this article, except that forfeited, escheated, or
8 waste and unappropriated lands may be certified by the
9 auditor at any time after they are brought to his atten-

tion. He shall note the fact of certification on the land record in his office. Upon completion of a list for certification, a charge of one dollar shall be added to the taxes, interest and charges already due on each item listed, to cover the costs incurred by the auditor in the preparation of the list, and in the event of sale or redemption, the same shall be collected and paid into the operating fund provided for in this article.

Escheated lands and waste and unappropriated lands shall be listed separately. The list shall be arranged by districts and, except in the case of waste and unappropriated lands, alphabetically by name of the former owner. The list shall state as to each item listed the information required by section six of this article to be set forth in the land record in the auditor's office, and shall specify as to each tract listed as forfeited or delinquent the amount of taxes and interest due or chargeable thereon on the date of certification, the publication and other charges due, with interest, and the total currently due. The specification of taxes due or chargeable shall as to delinquent land commence with those for nonpayment of which it was sold, and as to forfeited land with those properly chargeable to it for the first year of nonentry.

All items certified to each circuit court shall be numbered consecutively, and all subsequent orders, entries, applications or proceedings under this article in respect to any item shall refer to its number and to the year of certification. All tracts, lots, or parcels sold to the state as a unit may be treated by the auditor as a single item for purposes of certification. Subject to the provisions of this section, the auditor shall prescribe a form for the list and shall provide in such form adequate space to show the subsequent history and final disposition of each item certified.

The list shall be made in quadruplicate. The auditor shall keep the original and shall send one copy to the clerk of the circuit court, one to the clerk of the county court, and one to the deputy commissioner. The clerk of the circuit court and the clerk of the county court shall each bind his copy in a permanent book to be labeled

50 "Report of State Commissioner of Forfeited and Delin-
51 quent Lands", and the clerk of the county court shall note
52 the fact of the certification of each item on his record of
53 delinquent lands. Such copies shall become permanent
54 records, and shall be preserved as such in the offices of
55 the auditor, the county clerk and the circuit clerk.

56 All forfeited or delinquent lands heretofore certified by
57 the auditor to the circuit courts under the provisions of
58 former law may be redeemed at any time on or before
59 the thirtieth day of June, one thousand nine hundred
60 forty-seven, by paying to the sheriff upon order of the
61 deputy commissioner the amount required for redemp-
62 tion under the provisions of chapter one hundred forty,
63 acts of the Legislature, regular session, one thousand nine
64 hundred forty-five, and for this purpose, and no other,
65 such provisions in respect to redemption shall remain in
66 full force and effect until the thirtieth day of June, one
67 thousand nine hundred forty-seven. Thereafter, the
68 deputy commissioner shall allow no further redemptions,
69 and all such delinquent land shall, on the first day of
70 May, become irredeemable and subject to transfer or sale
71 under the provisions of sections three and four, article
72 thirteen of the constitution. Thereafter, the deputy com-
73 missioner shall proceed as provided in this article to
74 institute suits for the sale of lands heretofore certified by
75 the auditor which are subject to sale under the provi-
76 sions hereof.

CHAPTER 18. EDUCATION

Article

4. County Superintendent of Schools.
5. District Board of Education.
9. School Finances.

Article 4. County Superintendent of Schools.

Section

4. Compensation.
12. Exception.

Section 4. *Compensation.*—On or before the first day of
2 May of the year in which the superintendent is appointed,
3 the board shall fix the annual salary of the superintendent

4 for the period of appointment for the term beginning on
5 the first day of July following. The annual salary of such
6 superintendent shall not be less than five thousand dollars
7 nor more than ten thousand dollars, both exclusive of
8 state aid: *Provided, however,* That in counties having a
9 population in excess of sixty-five thousand, the board may
10 pay salaries in excess of ten thousand dollars. The board
11 shall pay the salary from the general current expense
12 fund of the district.

Sec. 12. *Exception.*—Notwithstanding the provisions of
2 section four of this article, the provisions of this article
3 as of January first, one thousand nine hundred sixty-one,
4 shall govern the meeting of the boards of education for
5 purposes of fixing the annual salaries of superintendents
6 for the fiscal year beginning July first, one thousand nine
7 hundred sixty-one.

Article 5. District Board of Education.

Section

4. Meetings; quorum; employment and assignment of teachers; compensation of members; affiliation with state and national associations.
37. *Exception.*

Section 4. *Meetings; Quorum; Employment and Assignment of Teachers; Compensation of Members; Affiliation with State and National Associations.*—The board shall
2 meet on the first Monday of July and the first and third
3 Tuesdays in August and at such other times as the board
4 may fix upon its records. At any meeting as authorized
5 above and in compliance with the provisions of article
6 four of this chapter, the board may employ such qualified
7 teachers, or those who will qualify by the time of entering
8 upon their duties, necessary to fill existing or anticipated
9 vacancies for the current or next ensuing school year.
10 On or before the first Monday in May the superintendent
11 shall furnish to the board a list of those probationary and
12 continuing contract teachers to be considered for transfer
13 and subsequent assignment for the next ensuing school
14 year.
15

17 Special meetings may be called by the president or any
18 three members, but no business shall be transacted other
19 than that designated in the call.

20 A majority of the members shall constitute the quorum
21 necessary for the transaction of official business.

22 Board members shall receive compensation at the rate
23 of twenty dollars per meeting attended. But they shall
24 not receive pay for more than twenty-four meetings in
25 any one fiscal year.

26 Members shall also be paid, upon the presentation of an
27 itemized sworn statement, for all necessary traveling ex-
28 penses incurred on official business, at the order of the
29 board.

30 When, by a majority vote of its members, a county
31 board of education deems it a matter of public interest,
32 such board may join the West Virginia school board asso-
33 ciation and the national school board association, and
34 may pay such dues as may be prescribed by said associa-
35 tions and approved by action of the respective county
36 boards. Membership dues and actual traveling expense
37 of board members for attending meetings of the West
38 Virginia school board association may be paid by their
39 respective county boards of education out of funds avail-
40 able to meet actual expenses of the members, but no
41 allowance shall be made except upon sworn itemized
42 statements.

Sec. 38. *Exception.*—Notwithstanding the provisions of
2 section four of this article, the provisions of this article
3 as of January first, one thousand nine hundred sixty-one,
4 shall govern the meetings of the boards of education for
5 the calendar year one thousand nine hundred sixty-one.

Article 9. School Finances.

Section

2-a. Levy by board; increased levy.

3-a. Publication of financial statement by county board of education.

8. Exception.

Section 2-a. *Levy by Board; Increased Levy.*—The
2 board, as provided by section nine, article eight of chapter
3 eleven, shall impose a levy for the maintenance and
4 operation of all schools in the county. This levy shall be
5 uniform throughout the county and the funds shall be
6 distributed and expended without regard to the locality
7 from which collected: *Provided, however, That if a*

8 majority of the voters of any political subdivision of the
9 county shall file with the board of education of the county
10 of which such political subdivision is a part, at their
11 budget session as provided by section nine, article eight
12 of chapter eleven, a petition praying for increased sal-
13 aries, funds for the support and maintenance of libraries,
14 medical and dental clinics, supervision and/or an exten-
15 sion of the school term therein for a given number of
16 months, the board shall extend the term of school for
17 the number of months requested in such petition and
18 shall lay levies sufficiently high on each one hundred
19 dollars' valuation of taxable property within such political
20 subdivision according to the last assessment thereof for
21 such purpose or purposes as specified in the petition,
22 which levies shall be separated and designated as a special
23 maintenance fund levy and special teachers' fund levy
24 of the political unit for which such levies are laid.

25 All additional levies so authorized shall be made as
26 provided by law and shall in no case exceed the statutory
27 limitation or maximum for the various classes of property
28 of the political subdivision authorizing the same.

29 Upon a petition of one hundred taxpayers of any politi-
30 cal subdivision of a county to the board of education of
31 the county of which such political subdivision is a part,
32 the board of education shall call an election within said
33 political subdivision for the purpose of authorizing the
34 county board of education to lay special increased rates
35 of levy on the property of said political subdivision, as
36 provided by law, for educational purposes as may be set
37 forth in the petition and in the call for the election.

38 The bonded indebtedness incurred by former magiste-
39 rial school district boards and independent district boards
40 shall remain the debt of the property originally pledged
41 as security for the payment of the obligation.

42 The county board shall impose separate levies in the
43 manner provided by sections nine and thirteen, article
44 eight, chapter eleven, upon the property in former mag-
45 isterial districts and independent districts for the pay-
46 ment of current requirements of principal and interest of
47 bonded indebtedness incurred prior to the creation of the
48 county school districts.

Sec. 3-a. *Publication of Financial Statement by County*

2 *Board of Education.*—The county board of education of
3 every county, within four weeks after the beginning of
4 each fiscal year, shall prepare and cause to be published,
5 one time, on a form to be prescribed by the state tax
6 commissioner and the state superintendent of free schools,
7 in two newspapers of opposite politics, if there be such
8 within the county, or if none be published therein (or
9 if no such paper will publish the same for the price fixed
10 by law therefor), the same shall be posted at each place
11 of voting in the county, a statement of the receipts and
12 expenditures of said board during the previous fiscal
13 year, showing the total receipts and the general sources
14 from which received, the name of each person receiving
15 money from any fund, together with the total amount
16 received during the fiscal year and the purpose for which
17 paid, arranging same under appropriate heads, the cost
18 of publishing such statement to be paid by the board from
19 the maintenance fund of said board. Such statement shall
20 also show a specific statement of all debts of the board,
21 the purpose for which each debt was contracted, its due
22 date, and to what date the interest thereon has been paid.
23 As soon as is practicable following the close of the fiscal
24 year, a copy of the published statement herein required
25 shall be filed by the board with the state tax commissioner
26 and with the state superintendent of free schools.

Sec. 8. *Exception.*—Notwithstanding the provisions of
2 sections two-a and three-a of this article, the provisions
3 of this article as of January first, one thousand nine
4 hundred sixty-one, shall govern for the year one thousand
5 nine hundred sixty-one, insofar as they relate to school
6 finances.

CHAPTER 143

(House Bill No. 224—By Mr. Speaker, Mr. Singleton)

[Passed March 1, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to appointment, term, salary and bond of tax commissioner; and appointment of assistant attorneys general to perform duties for the tax commissioner.

Article 1. Supervision.

Section

1. Tax commissioner; appointment of assistant attorneys general to perform duties for commissioner.

Be it enacted by the Legislature of West Virginia:

That section one, article 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:

Section 1. *Tax Commissioner; Appointment of Assistant Attorneys General to Perform Duties for Commissioner.*—There shall be a tax commissioner who shall be appointed by the governor, by and with the advice and consent of the senate. The tax commissioner in office when this code takes effect shall, unless sooner removed, continue to serve until his term expires, and his successor has been appointed and has qualified. On or before the first day of March, one thousand nine hundred thirty-five, and on or before the first day of March of each sixth year thereafter, the governor shall appoint a tax commissioner for a term of six years, commencing on said first day of March. The person so appointed shall take the oath or affirmation prescribed by section five of article four of the constitution. He shall give bond with good security, to be approved by the governor, in the penalty of five thousand dollars. The salary of the tax commissioner shall be ten thousand dollars a year. He shall be repaid his actual disbursements for traveling expenses. He shall be provided with an office in the capitol, and with such furniture and clerical assistance as shall be necessary.

The tax commissioner, if he deem such action necessary, may request the attorney general to appoint assistant attorneys general who shall perform such duties as may be required by the tax commissioner. The attorney

27 general, in pursuance of such request, may select and
28 appoint assistant attorneys general, to serve during the
29 will and pleasure of the attorney general, and such assist-
30 ants shall be paid out of any funds made available for that
31 purpose by the Legislature to the office of the tax commis-
32 sioner.

CHAPTER 144

(Senate Bill No. 279—By Mr. Davis)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property tax exemption for area development corporations on property used for profit, but solely for the purpose of promoting employment opportunities through industrial and economic development.

Article 3. Assessments Generally.

Section

9. Property exempt from taxation.

Be it enacted by the Legislature of West Virginia:

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

Section 9. *Property Exempt from Taxation.*—All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: Property belonging to the United States, other than property permitted by the United States to be taxed under state law; property belonging exclusively to the state; property belonging exclusively to any county, district, city, village, or town in this state, and used for

9 public purposes; property located in this state belonging
10 to any city, town, village, county or any other political
11 subdivision of another state, and used for public purposes;
12 property used exclusively for divine worship; parsonages
13 and the household goods and furniture pertaining thereto;
14 mortgages, bonds and other evidence of indebtedness in
15 the hands of bona fide owners and holders hereafter
16 issued and sold by churches and religious societies for the
17 purposes of securing money to be used in the erection of
18 church buildings used exclusively for divine worship, or
19 for the purpose of paying indebtedness thereon; ceme-
20 teries; property belonging to, or held in trust for, colleges,
21 seminaries, academies and free schools, if used for educa-
22 tional, literary or scientific purposes, including books,
23 apparatus, annuities, money and furniture; public and
24 family libraries; property used for charitable purposes,
25 and not held or leased out for profit; property used for
26 area economic development purposes by nonprofit cor-
27 porations when such property is not leased out for profit;
28 all real estate not exceeding one-half acre in extent, and
29 the buildings thereon, and used exclusively by any college
30 or university society as a literary hall, or as a dormitory
31 or club room, if not leased or otherwise used with a view
32 to profit; all property belonging to benevolent associa-
33 tions, not conducted for private profit; property belonging
34 to any public institution for the education of the deaf,
35 dumb or blind, or any hospital not held or leased out for
36 profit, house of refuge, lunatic or orphan asylum; homes
37 for children or for the aged, friendless or infirm, not con-
38 ducted for private profit; fire engines and implements for
39 extinguishing fires, and property used exclusively for the
40 safekeeping thereof, and for the meetings of fire com-
41 panies; and all property on hand to be used in the sub-
42 sistence of livestock on hand at the commencement of the
43 assessment year, household goods to the value of two
44 hundred dollars, dead victuals laid away for family use
45 and any other property or security exempted by any
46 other provision of law; but no property shall be exempt
47 from taxation which shall have been purchased or pro-
48 cured for the purpose of evading taxation, whether tem-
49 porarily holding the same over the first day of the assess-

50 ment year or otherwise: *Provided, however,* That the
51 property, both real and personal, which is exempt from
52 taxation by this section, except money, shall be entered
53 upon the assessor's books, together with the true and ac-
54 tual value thereof, but no taxes shall be levied upon the
55 same or extended upon the assessor's books.

56 Notwithstanding any other provision of this section,
57 however, no language herein shall be construed to exempt
58 from taxation any property owned by, or held in trust
59 for, educational, literary, scientific, religious or other
60 charitable corporations or organizations, unless such prop-
61 erty is used primarily and immediately for the purposes
62 of such corporations or organizations.

CHAPTER 145

(House Bill No. 447—By Mr. Myles and Mr. Boiarsky)

[Passed March 10, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to license taxes on coin operated laundries.

Article 12. License Taxes.

Section

3-a. Coin-operated laundries.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter eleven 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-a, to read as follows:

Section 3-a. *Coin-Operated Laundries.*—Notwithstanding all other provisions of this article, the owner or oper-

3 ator of a coin-operated laundry shall not be required to
4 obtain any license except a general store license, as pro-
5 vided in article thirteen-a, section two, and a decalco-
6 mania stamp for each coin operated machine owned by
7 the operator of said laundry and situate in said laundry.
8 The decalcomania stamp for each of the said machines
9 shall be obtained from the tax commissioner at a cost not
10 exceeding fifty cents.

C

CHAPTER 146

(House Bill No. 86—By Mr. Brotherton)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections six-a and six-b, imposing a license tax on the sale of manufactured tobacco by wholesale dealers; defining certain words for the purposes of the sections; providing appropriation to the state tax commissioner for the enforcement of the provisions of the cigarette sales act with respect to wholesalers and retailers of tobacco.

Article 12. License Taxes.

Section

- 6-a. Wholesale dealers in tobacco; definitions.
- 6-b. Amount allocated for administration of cigarette sales act.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections six-a and six-b, to read as follows:

Section 6-a. *Wholesale Dealers in Tobacco; Definitions.*

- 2 —When used in this section the following words, terms,

3 and phrases and any variations thereof required by the
4 context, shall be the meaning ascribed to them in this
5 section, except where the context indicates a different
6 meaning.

7 "Cigarettes" shall mean any roll for smoking made
8 wholly or in part of tobacco, irrespective of size or shape
9 and whether or not such tobacco is flavored, adulterated
10 or mixed with any other ingredient, the wrapper or cover
11 of which is made of paper or any other substance or
12 material except tobacco.

13 "Person" shall mean and include any individual, firm,
14 association, company, partnership, corporation, joint stock
15 company, club, agency, syndicate, municipal corporation
16 or other political subdivision of this state, trust, receiver,
17 trustee, fiduciary and conservator.

18 "Wholesaler" shall include any person who:

19 (a) Purchases cigarettes directly from the manufac-
20 turer; or

21 (b) Purchases cigarettes from any other person who
22 purchases from the manufacturer and who acquires such
23 cigarettes solely for the purpose of bona fide resale to
24 retail dealers or to other persons for the purposes of
25 resale only; or

26 (c) Services retail outlets by the maintenance of an
27 established place of business for the purchase of cigar-
28 ettes, including, but not limited to, the maintenance of
29 warehousing facilities for the storage and distribution of
30 cigarettes.

31 Nothing contained herein shall prevent a person from
32 qualifying in different capacities as both a "wholesaler"
33 and "retailer" under the applicable provisions of this
34 article.

35 "Commissioner" means the state tax commissioner, and
36 where the meaning of the context requires, all deputies
37 and employees duly authorized by him.

38 "Sale at wholesale" shall mean and include any bona
39 fide transfer of title to cigarettes for a valuable considera-
40 tion, made in the ordinary course of trade or in the usual
41 conduct of the wholesaler's business, to a retailer for the
42 purpose of resale.

43 After the effective date of this section, no person shall
44 engage in, or conduct the business of purchasing, selling,
45 consigning or distributing tobacco, as defined herein, in
46 this state without having first obtained the appropriate
47 license for that purpose as prescribed by this section. The
48 annual license fee as a wholesale dealer to sell tobacco
49 as defined herein shall be divided into three classes, as
50 follows: (1) Class A—all dealers who sell up to seven
51 hundred fifty thousand packages of cigarettes, one hun-
52 dred dollars; (2) Class B—all dealers who sell from
53 seven hundred fifty thousand packages of cigarettes to
54 one million five hundred thousand packages, two hun-
55 dred dollars; (3) Class C—all dealers who sell more than
56 one million five hundred thousand packages of cigarettes,
57 three hundred fifty dollars.

Sec. 6-b. *Amount Allocated for Administration of Ciga-
rette Sales Act.*—For the purpose of providing revenue
for the enforcement of the cigarette sales act with respect
to wholesalers and retailers of tobacco, from the moneys
derived from licenses issued under the provisions of sec-
tion six-a there is hereby appropriated to the state tax
commissioner, the sum of twenty thousand dollars per
annum which must be used for the enforcement of the
provisions of the cigarette sales act.

CHAPTER 147

(Senate Bill No. 103—By Mr. Davis)

[Passed March 7, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the license fee for collection agencies, the bond required to be furnished by such agencies and the filing of such bond.

Article 12. License Taxes.

Section

12. Collection agencies.

Be it enacted by the Legislature of West Virginia:

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

Section 12. *Collection Agencies.*—The annual license
2 fee to engage in the business of a collection agency within
3 this state shall be one hundred dollars. For purposes of
4 this section, solicitation or collection by or through an
5 agent operating within this state shall be considered to be
6 engaging in the business of a collection agency within
7 this state. Before such certificate of license is issued, the
8 person applying for the same shall execute a continuing
9 bond in the form prescribed by the tax commissioner with
10 satisfactory corporate surety in the penalty of five thou-
11 sand dollars, conditioned that such person will pay all
12 damages resulting from any unlawful act or action by
13 such person or his or its agent in connection with the con-
14 duct of the business of the collection agency. This bond
15 shall be filed with the tax commissioner.

CHAPTER 148

(House Bill No. 80—By Mr. Bedell)

[Passed March 7, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of gasoline.

Article 14. Gasoline Tax.

Section

1. Definitions; gasoline, person, company, distributor, retail dealer, importer, sale, purchase and motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section one, 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:

Section 1. *Definitions; Gasoline, Person, Company, Distributor, Retail Dealer, Importer, Sale, Purchase and Motor Vehicles.*—When used in this article: The term “gasoline” shall include any substance or combination of substances which is capable of use as a motor fuel for any internal combustion engine, except fuel oil, kerosene, cleaner’s solvent, and any other liquid petroleum product not commonly used as a motor fuel, when not used or sold for use as a motor fuel in an internal combustion engine: *Provided, however,* That the term “gasoline” shall not include diesel fuel, fuel oil or kerosene when used or sold for use as a motor fuel to operate railroad diesel locomotives in this state or when used as a motor fuel to operate watercraft operated upon the navigable streams of this state, nor include any fuel of a type sold exclusively as a motor fuel to operate aircraft.

The term “person” or the term “company” shall include any individual, firm, copartnership, joint venture, association, corporation, trust and any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context, and when used in connection with the penalties imposed by this article, shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint venture, association, corporation, trust or any other group acting as a unit.

The term “distributor” shall mean and include every person who refines, produces, manufactures, compounds or blends gasoline in this state for use or for sale to jobbers or consumers, and every person who is now engaged, or who may hereafter engage, in his own name or in the name of his representative or agent in this state, in the selling of gasoline for the purpose of resale or distribution; and persons operating tank wagons into this state from places of business located outside this state and selling gasoline in quantities as desired by purchasers in this state without definite orders having been placed prior to the delivery of the product, shall be deemed distributors in this state.

39 The term "retail dealer" shall mean and include any
40 person not a distributor who sells gasoline in this state
41 to consumers only.

42 The term "importer" shall mean any person who pur-
43 chases or obtains gasoline in the amount of twenty-five
44 gallons or more outside this state and uses the same within
45 the state.

46 The term "sale" shall include any exchange, gift, or
47 other disposition, and "purchase" shall include any acqui-
48 sition of ownership.

49 The term "motor vehicle" shall mean automobiles,
50 motor trucks and motorcycles, and shall include all
51 other vehicles, engines or machines which are operated
52 or propelled by combustion of gasoline.

CHAPTER 149

(Senate Bill No. 277—By Mr. Jackson)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to gasoline tax, and particularly the amount, measure and lien of tax and notice of discontinuance of business.

Article 14. Gasoline Tax.

Section

3. Amount, measure and lien of tax; notice of discontinuance of business.

Be it enacted by the Legislature of West Virginia:

That section three, 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:

Section 3. *Amount, Measure and Lien of Tax; Notice of Discontinuance of Business.*—There is hereby imposed upon every person who is a distributor, retail dealer or importer under the terms of this article, an excise tax based on the quantities of all gasoline produced, purchased, sold or used in this state, which tax shall be equivalent to seven cents per gallon on all gasoline. The tax shall be paid as hereinafter provided.

A distributor shall use as the measure of the tax the gallonage produced, purchased, sold or used in this state, as provided in section four of this article. Gallonage shall be included in the measure of the tax by refiners and producers when such gallonage has been placed into any tank from which withdrawals are made for sales or transfer to any other person.

An importer shall use as the measure of the tax the gallonage purchased and received for whatever use, as provided in section six of this article.

A retail dealer shall use as the measure of the tax the gallonage purchased or obtained by him, as provided in section five of this article.

The excise tax imposed by this article shall be paid by the person first producing, or receiving in this state, the gallonage of gasoline which under this article shall form the measure of such tax; but in no case shall any such gallonage be used more than once in determining taxes due hereunder.

The taxes imposed by this article are in addition to all other taxes now imposed by law.

The excise tax imposed by this article shall accrue from the date of production, purchase, sale or use of the gasoline. The penalties imposed by section thirteen of this article shall accrue from the date they become due and payable. A tax due and unpaid under this article shall be a debt due the state of West Virginia. It shall be a personal obligation of the taxpayer and shall be a lien in favor of the state of West Virginia upon all property and rights to property, whether real or personal, belonging to such taxpayer. The lien shall arise when a taxpayer fails to file his return and remit the tax at the time required

41 by this article. Such lien shall not be valid or enforceable
42 against a purchaser, including lien creditor, of real estate
43 or personal property for a valuable consideration without
44 notice, unless docketed in the office of the clerk of the
45 county court as provided in sections one and two, article
46 ten-c, chapter thirty-eight of the code of West Virginia,
47 one thousand nine hundred thirty-one, as last amended
48 and reenacted by chapter ninety-nine, acts of the Legis-
49 lature, regular session, one thousand nine hundred forty-
50 three.

51 Whenever a distributor, importer or retail dealer ceases
52 to engage in business within this state by reason of the
53 discontinuance, sale or transfer of the business of such
54 distributor, importer or retail dealer, it shall be his duty
55 to notify the tax commissioner in writing at the time of
56 the discontinuance, sale or transfer. Such notice shall
57 give the date of discontinuance, and in the event of the
58 sale or transfer of the business the date thereof and the
59 name and address of the purchaser or transferee thereof;
60 all taxes accruing under this article, but not yet due and
61 payable under the provisions of this article, shall, not-
62 withstanding such provisions, become due and payable
63 concurrently with such discontinuance, sale or transfer,
64 and it shall be the duty of such distributor, importer or
65 retail dealer to make a report and pay all such taxes, and
66 to surrender to the tax commissioner the license certifi-
67 cate theretofore issued, under the provisions of this ar-
68 ticle.

69 Unless the notice shall have been given to the tax com-
70 missioner as above provided, such purchaser or transferee
71 shall be liable to the state of West Virginia, for the amount
72 of all taxes and penalties, under the article accrued
73 against such distributor, importer or retail dealer so sell-
74 ing or transferring his business, on the date of such sale
75 or transfer, but only to the extent of the value of the
76 property and business thereby acquired from such dis-
77 tributor, importer, or retail dealer.

78 Any unexpended and unobligated revenue derived from
79 the one cent tax per gallon on gasoline imposed or levied
80 by chapter one hundred sixty-nine, acts of the Legislature,

81 regular session, one thousand nine hundred fifty-nine, to
82 match federal funds allocated for the interstate road sys-
83 tem in West Virginia, shall be used only for the purposes
84 set out in section twenty-two of this article.

CHAPTER 150

(House Bill No. 356—By Mr. Watson)

[Passed March 8, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a; and to amend and reenact section twenty-one, article fourteen of said chapter; and to amend and reenact section four, article fourteen-a of said chapter, all relating to the tax on gasoline and the motor carrier road tax.

Article

14. Gasoline Tax.

14-a. Motor Carrier Road Tax.

Be it enacted by the Legislature of West Virginia:

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

Article 14. Gasoline Tax.

Section

20-a. Partial refund of tax on gasoline used by buses.

21. False or fraudulent claim for refund; penalty.

Section 20-a. *Partial Refund of Tax on Gasoline Used by Buses.*—Any person who shall buy in quantities of

3 twenty-five gallons or more, at any one time, gasoline as
4 defined by this article, for use in any vehicle or vehicles
5 regularly operated by such person under a certificate of
6 public convenience and necessity or under a contract car-
7 rier permit for transportation of persons, may, if the gaso-
8 line tax imposed by this article shall have previously been
9 paid upon such gasoline, be refunded an amount equal to
10 three cents per gallon for each gallon of gasoline upon
11 which tax has been paid, upon presenting to the tax com-
12 missioner an affidavit accompanied by proof of such pur-
13 chases as required in section twenty and in the manner
14 and subject to the requirements as therein set forth. The
15 right to a refund under this section shall not be assignable,
16 and any assignment so made shall be void.

17 Notwithstanding any other provision of law, no refund
18 shall be made under authority of this section except on
19 gasoline and motor fuel used in the operation of urban
20 or suburban bus lines in this state, which are hereby
21 defined as bus lines the majority of whose passengers use
22 the buses for traveling a distance of not exceeding forty
23 miles, measured one way, on the same day between their
24 places of abode and their places of work, shopping areas
25 or schools.

Sec. 21. False or Fraudulent Claim for Refund; Penalty.

2 —If any person shall make a false or fraudulent claim for
3 the refunds referred to in sections nineteen, twenty and
4 twenty-a hereof, he shall be guilty of a felony, and,
5 upon conviction thereof, shall be confined in the peniten-
6 tiary not less than one nor more than five years.

Article 14-a. Motor Carrier Road Tax.

Section

4. Credit for payment of gasoline tax; refunds; hearing upon com-
missioner's refusal to make refund; appeals.

Section 4. *Credit for Payment of Gasoline Tax; Refunds;*
2 *Hearing Upon Commissioner's Refusal to Make Refund;*
3 *Appeals.*—Every motor carrier subject to the tax herein
4 imposed shall be entitled to a credit on such tax equivalent
5 to the amount of tax per gallon of gasoline assessed by ar-
6 ticle fourteen of this chapter on all gasoline purchased by
7 such carrier within this state for use in operations either

8 within or without this state and upon which gasoline the
9 tax imposed by the laws of this state has been paid: *Pro-*
10 *vided, however,* That such credit shall not be allowed for
11 any gasoline taxes for which any person, firm or corpora-
12 tion has applied, or received, a refund of gasoline taxes
13 under sections nineteen and twenty of article fourteen of
14 this chapter. Evidence of the payment of such tax in such
15 form as may be required by the commissioner shall be
16 furnished by each motor carrier claiming the credit herein
17 allowed. When the amount of the credit herein provided
18 exceeds the amount of the tax for which the carrier is
19 liable for the same quarter, such excess shall, under regu-
20 lations of the commissioner, be allowed as a credit on the
21 tax for which the carrier would be otherwise liable for
22 any of the four succeeding quarters. The commissioner is,
23 under regulations to be established by him, hereby au-
24 thorized to refund from the funds collected under the pro-
25 visions of this article the amount of the credit, if the motor
26 carrier by duly filed petition requests the commissioner
27 to do so and the commissioner is satisfied that said motor
28 carrier is entitled to said refund and that said motor car-
29 rier has not applied for a refund of the tax imposed by
30 article fourteen of this chapter: *Provided, however,* That
31 such refund shall not be made until after audit of the
32 applicant's records by the commissioner or upon the post-
33 ing of a surety company bond by the applicant in an
34 amount fixed by the commissioner conditioned to pay all
35 road taxes due hereunder: *Provided further,* That said
36 credit or refund shall in no case be allowed to reduce the
37 amount of tax to be paid by a motor carrier below the
38 amount due as tax on gasoline used in this state as pro-
39 vided by article fourteen of this chapter. If the commis-
40 sioner shall refuse to allow a refund or credit in the
41 amount claimed by the applicant, the applicant may re-
42 quest a hearing on said application. Such hearing shall
43 be held within a reasonable time after such request is
44 made and after notice to the applicant of not less than
45 ten days.

46 The hearing shall be informal and may be conducted by
47 an examiner designated by the tax commissioner. At such
48 hearing evidence may be offered in support of the claim

49 of credit or refund or to prove that such claim is incorrect.
50 After such hearing the tax commissioner shall, within a
51 reasonable time, give notice in writing of the decision.
52 Unless an appeal is taken within thirty days from the
53 service of this notice, the tax commissioner's decision shall
54 be final.

55 An appeal may be taken by the taxpayer to the circuit
56 court of Kanawha county, within thirty days after he
57 shall have received notice from the tax commissioner of
58 his determination as provided in this section.

59 The court shall hear the appeal, and determine anew
60 all questions submitted to it on appeal from the de-
61 termination of the tax commissioner. The court shall
62 render its decree thereon and a certified copy of said de-
63 cree shall be filed by the clerk of said court with the tax
64 commissioner who shall then correct his decision accord-
65 ingly and allow the credit or refund as decreed by said
66 court.

67 An appeal may be taken by the taxpayer or the tax com-
68 missioner to the supreme court of appeals of this state.

CHAPTER 151

(House Bill No. 81—By Mr. Bedell)

[Passed March 11, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen-a,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the defi-
nition of gasoline.

Article 14-a. Motor Carrier Road Tax.

Section

2. Definitions.

Be it enacted by the Legislature of West Virginia:

That section two, article fourteen-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:

Section 2. *Definitions*.—The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them by this section, except where the context clearly indicates a different meaning:

“Motor carrier” means every person, firm or corporation who operates or causes to be operated on any highway in this state any passenger vehicle that has seats for more than nine passengers in addition to the driver, or any road tractor, or any tractor truck, or any truck having more than two axles.

“Operations” means operations of all such vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

“Gasoline” shall include any substance or combination of substances which is capable of use as a motor fuel for any internal combustion engine, except fuel oil, kerosene, cleaner’s solvent, and any other liquid petroleum product not commonly used as a motor fuel, when not used or sold for use as a motor fuel in an internal combustion engine.

“Commissioner” means the state tax commissioner of West Virginia.

CHAPTER 152

(Senate Bill No. 3—By Mr. Carson, Mr. President)

[Passed January 19, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to consumers sales tax.

Article 15. Consumers Sales Tax.

Section

3-a. Additional consumers sales tax.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter eleven 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-a, to read as follows:

Section 3-a. *Additional Consumers Sales Tax.*—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent (\$.01) on each one dollar (\$1.00) of monetary consideration, or fraction thereof, in excess of one dollar (\$1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission, and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall expire August thirty-one, one thousand nine hundred sixty-one.

CHAPTER 153

(House Bill No. 481—By Mr. Speaker, Mr. Singleton)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, designated section two-a, relating to use tax.

Article 15-a. Use Tax.

Section

2-a. Additional use tax; expiration date.

Be it enacted by the Legislature of West Virginia:

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

Section 2-a. Additional Use Tax; Expiration Date.—

2 For the purpose of providing additional revenue for the
3 state fund, general revenue, there is hereby imposed,
4 other than in this section two-a to the contrary, an addi-
5 tional excise (use) tax in the same form, manner and
6 extent as in section two of this article provided; said
7 additional excise (use) tax is imposed at the rate of one
8 per cent of the purchase price of such property, with the
9 first one dollar of such purchase price being exempt for
10 the purpose of computing the additional excise tax im-
11 posed by this section.

12 Except as otherwise provided in this section, all pro-
13 visions of this article relating to the levy, imposition,
14 exemptions, payment, collection, remission, and assess-
15 ment of the excise tax imposed by section two of this
16 article shall be applicable to the levy, imposition, exemp-
17 tions, payment, collection, remission and assessment of
18 such additional tax as imposed by this section.

19 Notwithstanding the provisions of section twenty-six
20 of this article, all moneys received from the additional tax
21 imposed by this section shall be paid into the state fund,
22 general revenue, to be expended in whatever manner
23 provided by law.

24 The provisions of this section shall expire August
25 thirty-one, one thousand nine hundred sixty-one.

CHAPTER 154

(Senate Bill No. 105—By Mr. McCourt)

[Passed March 11, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article seventeen, and section two, article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of an additional tax on the sale of cigarettes, and upon the use, consumption or storage of cigarettes in this state, and declaring the purpose thereof.

Article

17. Excise Tax on Sale of Cigarettes.

18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Be it enacted by the Legislature of West Virginia:

That section two-b, article seventeen, and section two, article eighteen, 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 17. Excise Tax on Sale of Cigarettes.

Section

2-b. Additional cigarette tax for support of schools.

Section 2-b. *Additional Cigarette Tax for Support of Schools.*—For the purpose of providing additional revenue for the support of free schools, there is hereby levied and imposed, on and after midnight of the last day of June, one thousand nine hundred sixty-one, in addition to the taxes imposed by sections two and two-a of this article, an additional excise tax of two cents on each ten cigarettes, or fractional part thereof, sold within this state. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular excise tax on the sale of

12 cigarettes shall be applicable to the levy, imposition and
13 collection of such additional tax. Notwithstanding other
14 provisions of this article to the contrary, all moneys re-
15 ceived from the additional tax imposed by this section,
16 less deductions allowed by this article for refunds and for
17 costs of administration and operation, shall be paid by
18 the tax commissioner into the general school fund, to be
19 used solely for the support of free schools: *Provided,*
20 *however,* That the additional one cent tax on each ten
21 cigarettes or fractional part thereof imposed or levied by
22 this section shall be suspended on the last day of June,
23 one thousand nine hundred sixty-two.

Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Section

2. Levy of tax on cigarettes.

Section 2. *Levy of Tax on Cigarettes.*—For the purpose
2 of providing revenue for the general fund of this state an
3 excise tax is hereby levied, on and after midnight of the
4 last day of June, one thousand nine hundred sixty-one, on
5 the use, consumption or storage of cigarettes by consum-
6 ers in this state at the rate of three cents on each ten
7 cigarettes or fractional part thereof: *Provided, however,*
8 That the tax shall not apply if the tax levied in article
9 seventeen of this chapter has been paid: *Provided further,*
10 That the additional one cent tax on each ten cigarettes
11 or fractional part thereof imposed or levied by this sec-
12 tion shall be suspended on the last day of June, one
13 thousand nine hundred sixty-two.

CHAPTER 155

(Senate Bill No. 106—By Mr. Carson, Mr. President,
and Mr. McCourt)

[Passed February 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article twenty-one,

imposing a tax on personal incomes as such incomes are defined for federal income tax purposes, and providing for the administration and collection thereof.

Article 21. Personal Income Tax.

PART I. GENERAL.

Section

1. Legislative findings.
2. Short title; arrangement and classification.
3. Persons subject to tax.
4. Rate of tax.
5. Optional tax for certain resident individuals.
6. Accounting periods and methods.
7. Resident and nonresident defined.
8. Credits against tax.
9. Meaning of terms.

PART II. RESIDENTS.

11. West Virginia taxable income of a resident individual.
12. West Virginia adjusted gross income of a resident individual.
13. West Virginia deduction of a resident individual.
14. West Virginia standard deduction of a resident individual.
15. West Virginia itemized deduction of a resident individual.
16. West Virginia personal exemptions of a resident individual.
17. Resident partners.
18. West Virginia taxable income of a resident estate or trust.
19. Share of resident estate, trust or beneficiary in West Virginia fiduciary adjustment.
20. Credit for income tax of another state.

PART III. NONRESIDENTS.

31. West Virginia taxable income of a nonresident individual.
32. West Virginia adjusted gross income of a nonresident individual.
33. West Virginia deduction of a nonresident individual.
34. West Virginia standard deduction of a nonresident individual.
35. West Virginia itemized deduction of a nonresident individual.
36. West Virginia personal exemptions of a nonresident individual.
37. Nonresident partners.
38. West Virginia taxable income of a nonresident estate or trust.
39. Share of a nonresident estate, trust or beneficiary in income from West Virginia sources.
40. Credit for income tax of state of residence.

PART IV. RETURNS, DECLARATIONS AND PAYMENT OF TAX.

51. Returns and liabilities.
52. Time and place for filing returns and paying tax.
53. Signing of returns and other documents.
54. Change of resident status during year.
55. Declarations of estimated tax.
56. Payments of estimated tax.
57. Extensions of time.
58. Requirements concerning returns, notices, records and statements.
59. Report of change in federal taxable income.
60. Change of election.

PART V. WITHHOLDING OF TAX.

71. Requirement of withholding tax from wages.
72. Information statement for employee.
73. Credit for tax withheld.

Section

- 74. Employer's return and payment of withheld taxes.
- 75. Employer's liability for withheld taxes.
- 76. Employer's failure to withhold.

PART VI. PROCEDURE AND ADMINISTRATION.

- 80. General provisions.
- 81. Assessment.
- 82. Deficiency procedure.
- 83. Collection.
- 84. Lien.
- 85. Distraint.
- 86. Overpayments, credits and refunds.
- 87. Limitations on assessment.
- 88. Limitations on collection.
- 89. Interest.
- 90. Additions to tax.
- 91. Penalties.
- 92. Crimes.
- 93. Disposition of revenue.
- 94. Effective date; severability.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby amended by adding thereto a new article, designated article twenty-one, to read as follows:

PART I. GENERAL

Section 1. *Legislative Findings.*—The Legislature hereby finds and declares that the adoption by this state for its personal income tax purposes of the provisions of the laws of the United States relating to the determination of income for federal income tax purposes will (1) simplify preparation of state income tax returns by taxpayers, (2) improve enforcement of the state income tax through better use of information obtained from federal income tax audits, and (3) aid interpretation of the state tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

Sec. 2. *Short Title; Arrangement and Classification.*—This article may be cited as the "West Virginia Personal Income Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by

5 reason of the location or grouping of any particular sec-
6 tion or provision or portion of this article, nor shall the de-
7 scriptive matter or headings relating to any part, section,
8 subsection, or paragraph be given any legal effect.

Sec. 3. *Persons Subject to Tax.*—(a) *Imposition of Tax.*
2 —A tax determined in accordance with the rates set forth
3 in section four of this article is hereby imposed for each
4 taxable year on the West Virginia taxable income of every
5 individual, estate and trust.

6 (b) *Partners and Partnerships.*—A partnership as such
7 shall not be subject to tax under this article. Persons car-
8 rying on business as partners shall be liable for tax un-
9 der this article only in their separate or individual ca-
10 pacities.

11 (c) *Associations Taxable as Corporations.*—An associa-
12 tion, trust or other unincorporated organization which is
13 taxable as a corporation for federal income tax purposes,
14 shall not be subject to tax under this article.

15 (d) *Exempt Trusts and Organizations.*—A trust or
16 other unincorporated organization which by reason of its
17 purposes or activities is exempt from federal income tax
18 shall be exempt from tax under this article (regardless
19 of whether subject to federal income tax on unrelated
20 business taxable income).

21 (e) *Cross References.*—For definitions of West Vir-
22 ginia taxable income of:

23 (1) Resident individual, see section eleven.

24 (2) Resident estate or trust, see section eighteen.

25 (3) Nonresident individual, see section thirty-one.

26 (4) Nonresident estate or trust, see section thirty-
27 eight.

Sec. 4. *Rate of Tax.*—(a) *Rate of Tax on Individuals.*—
2 The tax imposed by section three of this article on the
3 West Virginia taxable income of every individual (other
4 than a head of a household to whom subsection (b) ap-
5 plies) and upon the West Virginia taxable income of every
6 estate and trust shall be equal to six per centum of the
7 federal income tax which would be imposed on an ident-
8 ical amount of federal taxable income under subsection

9 (a) of section one of the United States Internal Revenue
10 Code of 1954.

11 (b) Rate of Tax on Heads of Households.—The tax im-
12 posed by section three of this article on the West Virginia
13 taxable income of every individual who is a head of a
14 household in the determination of his federal income tax
15 for the taxable year shall be equal to six per centum of
16 the federal income tax which would be imposed upon an
17 identical amount of federal taxable income under sub-
18 section (b) of section one of the United States Internal
19 Revenue Code of 1954.

20 (c) Rates of Tax in Case of Joint Return or Return of
21 Surviving Spouse.—In the case of a joint return of a hus-
22 band and wife, the tax imposed by section three of this
23 article on the West Virginia taxable income shall be equal
24 to six per centum of twice the tax which would be im-
25 posed upon half the identical amount of federal taxable
26 income under subsection (a) of section one of the United
27 States Internal Revenue Code of 1954. For purposes of
28 this subsection of this article and for the purposes of sec-
29 tion five of this article, the return of an individual who is
30 entitled to file his federal income tax return for the tax-
31 able year as a surviving spouse shall be treated as a joint
32 return of a husband and wife.

Sec. 5. Optional Tax for Certain Resident Individuals.

2 —(a) General.—The tax commissioner may promulgate
3 tables enabling resident individuals who meet the condi-
4 tions of this section to compute their taxes under section
5 three of this article on the basis of their federal adjusted
6 gross incomes.

7 (b) Tables.—The tables promulgated under this section
8 shall show the amounts of tax due under section three of
9 this article to the nearest two dollars (or such smaller
10 amount as the tax commissioner may establish).

11 (c) Conditions for Optional Computation.—The op-
12 tional tax computation under this section may be elected
13 only if all the following conditions are satisfied by the
14 taxpayer, or by both husband and wife whose federal in-
15 come tax is determined on a joint return:

16 (1) The taxpayer has elected to take the standard de-

17 duction for federal income tax purposes or to pay the fed-
18 eral optional tax.

19 (2) The taxpayer has no items of income or deduction
20 described in section twelve (b) or (d) as an individual,
21 as a partner, or as a beneficiary of an estate or trust.

22 (3) The taxpayer's federal income tax is not reduced
23 by operation of:

24 (a) The federal alternative tax on long term capital
25 gains, or

26 (b) A federal provision which has the effect of taxing
27 income of the taxable year as if it were partly or wholly
28 income of a prior taxable year.

29 (4) The taxpayer satisfies such other conditions, not
30 inconsistent with the purposes of this section, as may be
31 specified by the tax commissioner.

32 (d) Manner of Election.—The election by a taxpayer
33 to compute his tax under this section shall be made under
34 regulations of the tax commissioner.

35 (e) Husband and Wife Computing West Virginia Taxes
36 Separately.—(1) A husband or wife who files a separate
37 federal return may elect the optional tax computation
38 under this section only if the other spouse's tax under this
39 article, if any, is determined under this section.

40 (2) A husband and wife who file a joint federal re-
41 turn may not elect the optional tax computation under
42 this section if they elect to determine their West Virginia
43 taxes separately.

Sec. 6. *Accounting Periods and Methods.*—(a) Account-
2 ing Periods.—A taxpayer's taxable year under this article
3 shall be the same as his taxable year for federal income
4 tax purposes.

5 (b) Change of Accounting Periods.—If a taxpayer's
6 taxable year is changed for federal income tax purposes,
7 his taxable year for purposes of this article shall be sim-
8 ilarly changed. If a taxable year of less than twelve
9 months results from a change of taxable year, the West
10 Virginia standard deduction, the West Virginia personal
11 exemptions and the credits allowed under section eight

12 shall be prorated under regulations of the tax commis-
13 sioner.

14 (c) Accounting Methods.—A taxpayer's method of ac-
15 counting under this article shall be the same as his method
16 of accounting for federal income tax purposes. In the ab-
17 sence of any method of accounting for federal income tax
18 purposes, West Virginia taxable income shall be computed
19 under such method as in the opinion of the tax commis-
20 sioner clearly reflects income.

21 (d) Change of Accounting Methods.—(1) If a tax-
22 payer's method of accounting is changed for federal in-
23 come tax purposes, his method of accounting for purposes
24 of this article shall be similarly changed.

25 (2) If a taxpayer's method of accounting is changed,
26 other than from an accrual to an installment method, any
27 additional tax which results from adjustments determined
28 to be necessary solely by reason of the change shall not
29 be greater than if such adjustments were rateably al-
30 located and included for the taxable year of the change
31 and the preceding taxable years, not in excess of two,
32 during which the taxpayer used the method of accounting
33 from which the change is made.

34 (3) If a taxpayer's method of accounting is changed
35 from an accrual to an installment method, any additional
36 tax for the year of such change of method and for any
37 subsequent year which is attributable to the receipt of
38 installment payments properly accrued in a prior year
39 shall be reduced by the portion of tax for any prior tax-
40 able year attributable to the accrual of such installment
41 payments, in accordance with regulations of the tax com-
42 missioner.

Sec. 7. *Resident and Nonresident Defined.*—(a) Resident
2 Individual.—Resident individual means an individual:

3 (1) Who is domiciled in this state, unless he maintains
4 no permanent place of abode in this state, maintains a
5 permanent place of abode elsewhere, and spends in the
6 aggregate not more than thirty days of the taxable year
7 in this state, or

8 (2) Who is not domiciled in this state but maintains

9 a permanent place of abode in this state and spends in
10 the aggregate more than one hundred eighty-three days of
11 the taxable year in this state.

12 (b) Nonresident Individual.—A nonresident individual
13 means an individual who is not a resident.

14 (c) Resident Estate or Trust.—A resident estate or
15 trust means:

16 (1) The estate of a decedent who at his death was
17 domiciled in this state,

18 (2) A trust created by will of a decedent who at his
19 death was domiciled in this state, or

20 (3) A trust created by, or consisting of property of,
21 a person domiciled in this state.

22 (d) Nonresident Estate or Trust.—A nonresident estate
23 or trust means an estate or trust which is not a resident.

24 (e) Cross Reference.—For effect of change of an indi-
25 vidual's resident status, see section fifty-four.

Sec. 8. *Credits against Tax.*—(a) Business and Oc-
2 cupation Tax Credit.—A credit shall be allowed against
3 the tax imposed by section three of this article equal to
4 the amount of the liability of the taxpayer for the taxable
5 year for any tax imposed under article thirteen of chapter
6 eleven of this code: *Provided*, That the amount of such
7 credit shall not exceed the portion of the tax imposed by
8 this article which is attributable to the West Virginia
9 taxable income derived by the taxpayer for the taxable
10 year from the business or occupation with respect to
11 which said tax under article thirteen was imposed. In
12 case the West Virginia taxable income of a taxpayer in-
13 cludes income from a partnership, estate, trust or a cor-
14 poration electing to be taxed under subchapter S of the
15 Internal Revenue Code of 1954, as amended, a part of any
16 tax liability of the partnership, estate, trust or corpora-
17 tion under said article thirteen shall be allowed to the
18 taxpayer, in computing the credit provided for by this
19 section, in an amount proportionate to the income of such
20 partnership, estate, trust or corporation, which is in-
21 cluded in the taxpayer's West Virginia taxable income.

22 (b) Transportation Privilege Tax Credit.—A credit
23 shall be allowed against the tax imposed by section three
24 of this article equal to the amount of the liability of the
25 taxpayer for the taxable year for any tax imposed on
26 the taxpayer under article twelve-a, chapter eleven
27 of this code: *Provided*, That the amount of such credit
28 shall not exceed the portion of the tax imposed by this
29 article which is attributable to the West Virginia tax-
30 able income derived by the taxpayer for the taxable
31 year from the exercise of the privilege with respect of
32 which said tax under article twelve-a was imposed. In
33 case the West Virginia taxable income of a taxpayer
34 includes income from a partnership, estate, trust or a
35 corporation electing to be taxed under subchapter S of
36 the Internal Revenue Code of 1954, as amended, a part
37 of any tax liability of the partnership, estate, trust, or
38 corporation under said article twelve-a shall be allowed
39 to the taxpayer, in computing the credit provided for by
40 this section in an amount proportionate to the income of
41 such partnership, estate, trust or corporation which is
42 included in the taxpayer's West Virginia taxable income.

43 (c) Cross Reference.—For credit in respect of:

44 (1) Taxes withheld on wages, see section seventy-
45 three,

46 (2) Taxes imposed on a resident by other states, see
47 section twenty,

48 (3) Taxes imposed on a nonresident by the state of
49 his residence, see section forty.

Sec. 9. *Meaning of Terms.*—Any term used in this
2 article shall have the same meaning as when used in a
3 comparable context in the laws of the United States re-
4 lating to income taxes, unless a different meaning is
5 clearly required. Any reference in this article to the laws
6 of the United States shall mean the provisions of the
7 Internal Revenue Code of 1954, as amended, and such
8 other provisions of the laws of the United States as relate
9 to the determination of income for federal income tax
10 purposes. All amendments made to the laws of the United
11 States prior to the first day of January, one thousand nine

12 hundred sixty-one, shall be given effect in determining
13 the taxes imposed by this article but no amendment to
14 laws of the United States made after said date shall be
15 given effect.

PART II. RESIDENTS

Sec. 11. *West Virginia Taxable Income of a Resident Individual.*—(a) General.—The West Virginia taxable income of a resident individual shall be his West Virginia adjusted gross income less his West Virginia deduction and West Virginia personal exemptions, as determined under this Part.

(b) Husband and Wife.—(1) If the federal taxable income of husband or wife is determined on a separate federal return, their West Virginia taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

(A) Their tax shall be determined on their joint West Virginia taxable income, or

(B) Separate taxes may be determined on their separate West Virginia taxable incomes if they so elect and if they comply with the requirements of the tax commissioner in setting forth information on a single form.

(3) If either husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate West Virginia taxable incomes on such single or separate forms as may be required by the tax commissioner, unless both elect to determine their joint West Virginia taxable income as if both were residents.

Sec. 12. *West Virginia Adjusted Gross Income of a Resident Individual.*—(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications Increasing Federal Adjusted Gross Income.—There shall be added to federal adjusted gross income:

10 (1) Interest income on obligations of any state other
11 than this state, or of a political subdivision of any such
12 other state unless created by compact or agreement to
13 which this state is a party;

14 (2) Interest or dividend income on obligations or se-
15 curities of any authority, commission, or instrumentality
16 of the United States, which the laws of the United States
17 exempt from federal income tax but not from state in-
18 come taxes;

19 (3) Income taxes imposed by this state or any other
20 taxing jurisdiction, to the extent deductible in determin-
21 ing federal adjusted gross income and not credited against
22 federal income tax; and

23 (4) Interest on indebtedness incurred or continued to
24 purchase or carry obligations or securities the income
25 from which is exempt from tax under this article, to the
26 extent deductible in determining federal adjusted gross
27 income.

28 (c) Modifications Reducing Federal Adjusted Gross
29 Income.—There shall be subtracted from federal adjusted
30 gross income:

31 (1) Interest income on obligations of the United States
32 and its possessions to the extent includible in gross in-
33 come for federal income tax purposes;

34 (2) Interest or dividend income on obligations or se-
35 curities of any authority, commission or instrumentality
36 of the United States to the extent includible in gross in-
37 come for federal income tax purposes but exempt from
38 state income taxes under the laws of the United States;

39 (3) Any gain from the sale or other disposition of
40 property having a higher fair market value on the first
41 day of January, one thousand nine hundred sixty-one, than
42 the adjusted basis at said date for federal income tax pur-
43 poses: *Provided, however,* That the amount of this adjust-
44 ment is limited to that portion of any such gain which
45 does not exceed the difference between such fair market
46 value and such adjusted basis: *Provided further,* That if
47 such gain is considered a long-term capital gain for fed-
48 eral income tax purposes, the modification shall be limited
49 to fifty per centum of such portion of the gain; and

50 (4) The amount of any refund or credit for overpay-
51 ment of income taxes imposed by this state, or any other
52 taxing jurisdiction, to the extent properly included in
53 gross income for federal income tax purposes.

54 (d) Modification for West Virginia Fiduciary Adjust-
55 ment.—There shall be added to or subtracted from federal
56 adjusted gross income (as the case may be) the taxpay-
57 er's share, as beneficiary of an estate or trust, of the West
58 Virginia fiduciary adjustment determined under section
59 nineteen.

60 (e) Partners.—The amounts of modifications required
61 to be made under this section by a partner, which relate
62 to items of income, gain, loss or deduction of a partner-
63 ship, shall be determined under section seventeen.

64 (f) Husband and Wife.—If husband and wife deter-
65 mine their federal income tax on a joint return but de-
66 termine their West Virginia income taxes separately,
67 they shall determine their West Virginia adjusted gross
68 incomes separately as if their federal adjusted gross in-
69 comes had been determined separately.

Sec. 13. *West Virginia Deduction of a Resident Indi-*
2 *vidual.*—The West Virginia deduction of a resident indi-
3 vidual shall be his West Virginia standard deduction un-
4 less he elects to deduct his West Virginia itemized deduc-
5 tion under the conditions set forth in section fifteen.

Sec. 14. *West Virginia Standard Deduction of a Resi-*
2 *dent Individual.*—(a) General.—The West Virginia stand-
3 ard deduction of a resident individual, or of husband and
4 wife whose West Virginia taxable income is determined
5 jointly, shall be ten per centum of West Virginia adjusted
6 gross income or one thousand dollars, whichever is less.
7 (b) Husband and Wife Determining Income Sepa-
8 rately.—The West Virginia standard deductions of hus-
9 band and wife whose West Virginia taxable incomes are
10 determined separately (whether or not on a single form)
11 shall not exceed ten per centum of the aggregate of their
12 separate West Virginia adjusted gross incomes or one
13 thousand dollars, whichever is less, but may be taken by
14 either or divided between them in such proportions as
15 they may elect.

Sec. 15. *West Virginia Itemized Deduction of a Resident Individual.*—(a) General.—If federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Husband and Wife.—(1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose West Virginia taxable incomes are determined separately, may be taken by either or divided between them in such proportions as they may elect.

(c) Modifications Reducing Federal Itemized Deductions.—The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) Income taxes imposed by this state or any other taxing jurisdiction; and

(2) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article.

(d) Partners.—The amounts of modifications under subsection (c) required to be made by a partner with respect to items of deduction of a partnership shall be determined under section seventeen.

Sec. 16. *West Virginia Personal Exemptions of a Resident Individual.*—(a) General.—A resident individual shall be allowed a West Virginia exemption of six hun-

4 dred dollars for each exemption for which he is entitled
5 to a deduction for the taxable year for federal income tax
6 purposes.

7 (b) Husband and Wife.—If the West Virginia income
8 taxes of a husband and wife are separately determined
9 but their federal income tax is determined on a joint re-
10 turn, each of them shall be separately entitled to a West
11 Virginia exemption of six hundred dollars for each federal
12 exemption to which he would be separately entitled for
13 the taxable year if their federal income taxes had been
14 determined on separate returns.

Sec. 17. *Resident Partners.*—(a) Partner's Modifica-
2 tions.—In determining West Virginia adjusted gross in-
3 come and West Virginia taxable income of a resident
4 partner, any modification described in section twelve (b),
5 (c) or (d) or section fifteen (c), which relates to an item
6 of partnership income, gain, loss or deduction shall be
7 made in accordance with the partner's distributive share,
8 for federal income tax purposes, of the items to which the
9 modifications relate. Where a partner's distributive share
10 of any such item is not required to be taken into account
11 separately for federal income tax purposes, the partners
12 distributive share of such item shall be his distributive
13 share for federal income tax purposes of partnership taxa-
14 ble income or loss generally.

15 (b) Character of Items.—Each item of partnership in-
16 come, gain, loss, or deduction shall have the same charac-
17 ter for a partner under this article as for federal income
18 tax purposes. Where an item is not characterized for fed-
19 eral income tax purposes, it shall have the same character
20 for a partner as if realized directly from the source from
21 which realized by the partnership, or incurred in the same
22 manner as incurred by the partnership.

23 (c) West Virginia Tax Avoidance or Evasion.—Where
24 a partner's distributive share of an item of partnership
25 income, gain, loss or deduction is determined for federal
26 income tax purposes by special provision in the partner-
27 ship agreement with respect to such item, and where the
28 principal purpose of such provision is the avoidance or

29 evasion of tax under this article, the partner's distributive
30 share of such item, and any modification required with
31 respect thereto shall be determined as if the partnership
32 agreement made no special provision with respect to such
33 item.

Sec. 18. *West Virginia Taxable Income of a Resident*

2 *Estate or Trust.*—The West Virginia taxable income of a
3 resident estate or trust means its federal taxable income
4 as defined in the laws of the United States for the taxable
5 year, with the following modifications:

6 (1) There shall be subtracted six hundred dollars as
7 the West Virginia exemption of the estate or trust, and
8 there shall be added the amount of its federal deduction
9 for a personal exemption.

10 (2) There shall be subtracted the modification de-
11 scribed in section twelve (c) (3), with respect to gains
12 from the sale or other disposition of property, to the ex-
13 tent such gains are excluded from distributable net in-
14 come of the estate or trust for federal income tax pur-
15 poses.

16 (3) There shall be added or subtracted (as the case may
17 be) the share of the estate or trust in the West Virginia
18 fiduciary adjustment determined under section nineteen.

Sec. 19. *Share of Resident Estate, Trust or Beneficiary*

2 *in West Virginia Fiduciary Adjustment.*—(a) General.—
3 An adjustment shall be made in determining West Vir-
4 ginia taxable income of a resident estate or trust under
5 section eighteen, or West Virginia adjusted gross income
6 of a resident beneficiary of any estate or trust under sec-
7 tion twelve (d), in the amount of the share of each in the
8 West Virginia fiduciary adjustment as determined in
9 this section.

10 (b) Definition.—The West Virginia fiduciary adjust-
11 ment shall be the net amount of the modifications de-
12 scribed in section twelve (b), (c) and (d), and section
13 fifteen (c) which relate to items of income, gain, loss or
14 deduction of an estate or trust. Such net amount shall not
15 include any modification described in section twelve (c)
16 (3), with respect to gains from the sale or other disposi-

tion of property, to the extent such gains are excluded from distributable net income of the estate or trust for federal income tax purposes.

(c) Shares of West Virginia Fiduciary Adjustment.—

(1) The respective shares of an estate or trust and its beneficiaries (including, solely for the purpose of this allocation, nonresident beneficiaries) in the West Virginia fiduciary adjustment shall be in proportion to their respective shares of distributable net income of the estate or trust for federal income tax purposes.

(2) If the distributable net income for the taxable year of the estate or trust is zero, the share of each beneficiary in the West Virginia fiduciary adjustment shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is distributed within such year, or is required to be distributed currently. Any balance of the West Virginia fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate Attribution of Modifications.—The tax commissioner may, on application, authorize the use of such other methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable, on such terms and conditions as he may require.

Sec. 20. Credit for Income Tax of Another State.—(a)

General.—A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, upon income both derived therefrom and subject to tax under this article.

(b) Limitations.—(1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's West Virginia income subject to taxation by such other jurisdiction by the total amount of the taxpayer's West Virginia income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less

16 than would have been due if the income subject to tax-
17 ation by such other jurisdiction were excluded from the
18 taxpayer's West Virginia income.

19 (c) Exception.—No credit shall be allowed under this
20 section for a tax of a jurisdiction which allows residents of
21 this state a credit against the taxes imposed by such other
22 jurisdiction for the tax under this article, if such other
23 credit is substantially similar to the credit granted by
24 section forty.

25 (d) Definition.—For purposes of this section West Vir-
26 ginia income means:

27 (1) The West Virginia adjusted gross income of an
28 individual, or

29 (2) The amount of the income of an estate or trust, de-
30 termined as if the estate or trust were an individual com-
31 puting his West Virginia adjusted gross income under
32 section twelve.

PART III. NONRESIDENTS

Sec. 31. *West Virginia Taxable Income of a Nonresi-*
2 *dent Individual.*—(a) General.—The West Virginia tax-
3 able income of a nonresident individual shall be his West
4 Virginia adjusted gross income less his West Virginia de-
5 duction and West Virginia personal exemptions, as de-
6 termined under this part.

7 (b) Husband and Wife.—(1) If the federal taxable
8 income of husband or wife, both of whom are non-
9 residents, is determined on a separate federal return,
10 their West Virginia taxable incomes shall be separately
11 determined.

12 (2) If the federal taxable income of husband and wife,
13 both of whom are nonresidents, is determined on a joint
14 federal return, or if neither files a federal return:

15 (A) Their tax shall be determined on their joint West
16 Virginia taxable income, or

17 (B) Separate taxes may be determined on their sep-
18 arate West Virginia taxable incomes if they so elect and if
19 they comply with the requirements of the tax commis-
20 sioner in setting forth information on a single form.

21 (3) If either husband or wife is a resident and the other
22 is a nonresident, separate taxes shall be determined on
23 their separate West Virginia taxable incomes on such
24 single or separate forms as may be required by the tax
25 commissioner, unless both elect to determine their joint
26 West Virginia taxable income as if both were residents.

Sec. 32. *West Virginia Adjusted Gross Income of a Non-*
2 *resident Individual.*—(a) General.—The West Virginia
3 adjusted gross income of a nonresident individual shall be
4 the sum of the following:

5 (1) The net amount of items of income, gain, loss and
6 deduction entering into his federal adjusted gross income,
7 as defined in the laws of the United States for the taxable
8 year, derived from or connected with West Virginia
9 sources, including:

10 (A) His distributive share of partnership income, gain,
11 loss and deduction, determined under section thirty-seven,
12 and

13 (B) His share of estate or trust income, gain, loss and
14 deduction, determined under section thirty-nine; and

15 (2) The portion of the modifications described in sub-
16 sections (b) and (c) of section twelve which relate to
17 income derived from West Virginia sources (including
18 any modifications attributable to him as a partner).

19 (b) *Income and Deductions from West Virginia*
20 *Sources.*—(1) Items of income, gain, loss and deduction
21 derived from or connected with West Virginia sources
22 shall be those items attributable to:

23 (A) The ownership of any interest in real or tangible
24 personal property in this state; or

25 (B) A business, trade, profession or occupation car-
26 ried on in this state.

27 (2) *Income from intangible personal property, includ-*
28 *ing annuities, dividends, interest, and gains from the dis-*
29 *position of intangible personal property, shall constitute*
30 *income derived from West Virginia sources only to the*
31 *extent that such income is from property employed in a*
32 *business, trade, profession, or occupation carried on in*
33 *this state.*

34 (3) Deductions with respect to capital losses, net long-
35 term capital gains and net operating losses shall be based
36 solely on income, gain, loss and deduction derived from
37 or connected with West Virginia sources, under regula-
38 tions of the tax commissioner, but otherwise shall be de-
39 termined in the same manner as the corresponding federal
40 deductions.

41 (c) Income and Deductions Partly from West Virginia
42 Sources.—If a business, trade, profession or occupation is
43 carried on partly within and partly without this state,
44 as determined under regulations of the tax commissioner,
45 the items of income, gain, loss and deduction derived
46 from or connected with West Virginia sources shall be
47 determined by apportionment and allocation under such
48 regulation.

49 (d) Purchase and Sale for Own Account.—A nonresi-
50 dent, other than a dealer holding property primarily for
51 sale to customers in the ordinary course of his trade or
52 business, shall not be deemed to carry on a business, trade,
53 profession or occupation in this state solely by reason of
54 the purchase and sale of property for his own account.

55 (e) Husband and Wife.—If husband and wife deter-
56 mine their federal income tax on a joint return but de-
57 termine their West Virginia income taxes separately, they
58 shall determine their West Virginia adjusted gross in-
59 comes separately as if their federal adjusted gross incomes
60 had been determined separately.

2 Sec. 33. *West Virginia Deduction of a Nonresident In-*
3 *dividual.*—The West Virginia deduction of a nonresident
4 individual shall be his West Virginia standard deduction
5 unless he elects to deduct his West Virginia itemized de-
6 duction under the conditions set forth in section thirty-
7 five.

2 Sec. 34. *West Virginia Standard Deduction of a Non-*
3 *resident Individual.*—The West Virginia standard deduc-
4 tion of a nonresident individual shall be ten per centum
5 of his West Virginia adjusted gross income, or one thou-
6 sand dollars, whichever is less. The West Virginia stand-
7 ard deduction of a nonresident husband or wife shall be
determined under the rules of section fourteen.

Sec. 35. *West Virginia Itemized Deduction of a Non-resident Individual.*—(a) General.—If federal taxable income of a nonresident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his West Virginia itemized deduction in lieu of his West Virginia standard deduction. The West Virginia itemized deduction of a nonresident individual shall be the same as the total amount of the following of his deductions from federal adjusted gross income, as provided in the laws of the United States for the taxable year (including any items attributable to him as a partner):

(1) Deductions for contributions or gifts to this state or to any political subdivision thereof, or to any corporation, trust, community chest, fund, foundation, or other entity organized or operated under the laws of this state;

(2) Deductions for alimony or separate maintenance payments includible in the West Virginia adjusted gross income of the recipient;

(3) Deductions for losses of real or tangible personal property having an actual situs in this state, arising from fire, storm, shipwreck or other casualty, or from theft;

(4) Deductions, with respect to real or tangible personal property having an actual situs in this state, for losses (other than capital losses) incurred in any transaction entered into for profit but not connected with the taxpayer's trade or business; and

(5) Deductions determined under regulations of the tax commissioner to be connected with his West Virginia adjusted gross income, except deductions for income taxes imposed by this state or any other taxing jurisdiction.

(b) *Husband and Wife.*—(1) A husband and wife, both of whom are required to file returns under this article, shall be allowed West Virginia itemized deductions only if both elect to take West Virginia itemized deductions.

(2) The total of the West Virginia itemized deductions of a husband and wife whose federal taxable income is determined on a joint return but whose West Virginia taxable incomes are determined separately may be taken by either or divided between them as they may elect.

Sec. 36. *West Virginia Personal Exemptions of a Non-resident Individual.*—A nonresident individual shall be allowed the same West Virginia exemptions as are allowed by section sixteen to a resident individual.

Sec. 37. *Nonresident Partners.*—(a) *Portion Derived from West Virginia Sources.*—In determining West Virginia adjusted gross income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with West Virginia sources of such partner's distributive share, for federal income tax purposes, of items of partnership income, gain, loss and deduction, as such portion shall be determined under regulations of the tax commissioner consistent with the applicable rules of section thirty-two. In determining West Virginia taxable income of a nonresident partner of any partnership, there shall be attributed to him his distributive share, for federal income tax purposes, of those partnership items of deduction which are deductible by him under the applicable rules of section thirty-five.

(b) *Special Rules as to West Virginia Sources.*—In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital, or

(2) Allocates to the partner, as income or gain from sources outside West Virginia, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside West Virginia to partnership income or gain from all sources, except as authorized in subsection (d), or

(3) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with West Virginia sources than his proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (d).

(c) *Partner's Modifications.*—Any modification described in subsection (b) or (c) of section twelve, which relates to an item of partnership income, gain, loss or de-

duction, shall be made in accordance with the partner's distributive share for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with West Virginia sources.

(d) *Alternate Methods.*—The tax commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with West Virginia sources, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he may require.

(e) *Cross Reference.*—(1) For a partner's distributive share of items, see subsection (a) of section seventeen.

(2) For character of partnership items for a partner, see subsection (b) of section seventeen.

(3) For effect of special provision in partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance or evasion of tax under this article, see subsection (c) of section seventeen.

Sec. 38. West Virginia Taxable Income of a Nonresident Estate or Trust.—(a) *General.*—The West Virginia taxable income of a nonresident estate or trust shall be determined as follows:

(1) *Items in Distributable Net Income.*—There shall be determined its share of income, gain, loss and deduction from West Virginia sources under section thirty-nine (relating to items entering into the definition of distributable net income).

(2) *Items Not in Distributable Net Income.*—There shall be added or subtracted (as the case may be) the amount derived from or connected with West Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes, but excluded from the definition of federal distributable net income of the estate or trust. The source of such income, gain, loss and deduction shall be determined in accordance with the applicable

18 rules of sections thirty-two and thirty-five as in the case
19 of a nonresident individual.

20 (3) Modifications.—There shall be subtracted the
21 amount of any modifications described in paragraph (3)
22 of subsection (c) of section twelve with respect to in-
23 come or gain referred to in paragraph (2) of this sub-
24 section.

25 (4) Exemption.—There shall be subtracted the amount
26 of six hundred dollars as a West Virginia exemption.

27 (b) Special West Virginia Source Rules.—Deductions
28 with respect to capital losses, net long-term capital gains
29 and net operating losses shall be based solely on income,
30 gains, losses and deductions derived from or connected
31 with West Virginia sources, under regulations of the tax
32 commissioner, but otherwise determined in the same
33 manner as the corresponding federal deductions.

Sec. 39. *Share of a Nonresident Estate, Trust or Bene-
2 ficiary in Income from West Virginia Sources.*—(a)
3 General.—The share of a nonresident estate or trust under
4 paragraph (1) of subsection (a) of section thirty-eight,
5 and the share of a nonresident beneficiary of any estate
6 or trust under subsection (a) of section thirty-two, in
7 estate or trust income, gain, loss and deduction from West
8 Virginia sources shall be determined as follows:

9 (1) Items of Distributable Net Income from West
10 Virginia Sources.—There shall be determined the items
11 of income, gain, loss and deduction, derived from or con-
12 nected with West Virginia sources, which enter into the
13 definition of federal distributable net income of the estate
14 or trust for the taxable year. Such determination of
15 source shall be made in accordance with the applicable
16 rules of sections thirty-two and thirty-five as in the case
17 of a nonresident individual.

18 (2) Addition or Subtraction of Modifications.—There
19 shall be added or subtracted (as the case may be) the
20 modifications described in subsections (b) and (c) of sec-
21 tion twelve, to the extent relating to items of income, gain,
22 loss and deduction, derived from or connected with West
23 Virginia sources, which enter into the definition of federal
24 distributable net income. No modification shall be made

25 under this subsection which has the effect of duplicating
26 an item already reflected in the definition of federal dis-
27 tributable net income.

28 (3) Allocation Among Estate or Trust and Benefici-
29 aries.—(A) The amounts determined under paragraphs
30 (1) and (2) shall be allocated among the estate or
31 trust and its beneficiaries (including, solely for the pur-
32 pose of this allocation, resident beneficiaries) in propor-
33 tion to their respective shares of federal distributable net
34 income.

35 (B) The amounts so allocated shall have the same
36 character under this article as for federal income tax pur-
37 poses. Where an item entering into the computation of
38 such amounts is not characterized for federal income tax
39 purposes, it shall have the same character as if realized
40 directly from the source from which realized by the
41 estate or trust, or incurred in the same manner as incurred
42 by the estate or trust.

43 (b) Alternate Methods of Determining Shares.—(1)
44 If the estate or trust has no federal distributable net
45 income for the taxable year, the share of each bene-
46 ficiary (including, solely for the purpose of this allocation,
47 resident beneficiaries) in the net amount determined
48 under paragraphs (1) and (2) of subsection (a) shall be
49 in proportion to his share of the estate or trust income for
50 such year, under local law or the governing instrument,
51 which is required to be distributed currently and any
52 other amounts of such income distributed in such year.
53 Any balance of such net amounts shall be allocated to
54 the estate or trust.

55 (2) The tax commissioner may, on application, author-
56 ize the use of such other methods of determining the re-
57 spective shares of the beneficiaries and of the estate or
58 trust in its income derived from West Virginia sources,
59 and the modifications related thereto, as may be appro-
60 priate and equitable, on such terms and conditions as he
61 may require.

Sec. 40. *Credit for Income Tax of State of Residence.*—

2 (a) General.—A nonresident shall be allowed a credit
3 against the tax otherwise due under this article for any

4 income tax imposed for the taxable year by another state
5 of the United States or by the District of Columbia, of
6 which the taxpayer is a resident.

7 (b) Limitation.—The credit under this section shall
8 not exceed either:

9 (1) The percentage of the other tax determined by
10 dividing the portion of the taxpayer's West Virginia in-
11 come which is also subject to the other tax by the total
12 amount of his income subject to such other tax, or

13 (2) The percentage of the tax otherwise due under
14 this article, determined by dividing the portion of the
15 taxpayer's West Virginia income which is also subject to
16 the other tax by the total amount of the taxpayer's West
17 Virginia income.

18 (c) Exceptions.—No credit shall be allowed under
19 this section unless the jurisdiction of which the taxpayer
20 is a resident:

21 (1) Grants a substantially similar credit to residents
22 of this state, or

23 (2) Imposes an income tax on its own residents with
24 respect to income derived from this state, and exempts
25 from income tax the income of residents of this state.

26 (d) Definition.—For purposes of this section West
27 Virginia income means:

28 (1) The West Virginia adjusted gross income of an in-
29 dividual, or

30 (2) The income derived from West Virginia sources
31 by an estate or trust, determined in accordance with the
32 applicable rules of section thirty-two as in the case of a
33 nonresident individual.

PART IV. RETURNS, DECLARATIONS, AND PAYMENT OF TAX

2 Sec. 51. *Returns and Liabilities.*—(a) General.—On or
3 before the fifteenth day of the fourth month following the
4 close of a taxable year, an income tax return under this
5 article shall be made and filed by or for:

6 (1) Every resident individual required to file a federal
income tax return for the taxable year, or having West

7 Virginia adjusted gross income for the taxable year, de-
8 termined under section twelve in excess of the sum of his
9 West Virginia personal exemptions;

10 (2) Every resident estate or trust required to file a
11 federal income tax return for the taxable year, or having
12 any West Virginia taxable income for the taxable year,
13 determined under section eighteen;

14 (3) Every nonresident individual having any West
15 Virginia adjusted gross income for the taxable year, de-
16 termined under section thirty-two, in excess of the sum of
17 his West Virginia personal exemptions; and

18 (4) Every nonresident estate or trust having items of
19 income or gain derived from West Virginia sources, de-
20 termined in accordance with the applicable rules of sec-
21 tion thirty-two as in the case of a nonresident individual,
22 in excess of its West Virginia exemption.

23 (b) Husband and Wife.—(1) If the federal income
24 tax liability of husband or wife is determined on a sepa-
25 rate federal return, their West Virginia income tax lia-
26 bilities and returns shall be separate.

27 (2) If the federal income tax liabilities of husband
28 and wife other than a husband and wife described in
29 paragraph (3) of this subsection (b) are determined
30 on a joint federal return, or if neither files a federal
31 return:

32 (A) They shall file a joint West Virginia income tax
33 return, and their tax liabilities shall be joint and several,
34 or

35 (B) They may elect to file separate West Virginia in-
36 come tax returns on a single form if they comply with the
37 requirements of the tax commissioner in setting forth in-
38 formation, and in such event their tax liabilities shall
39 be separate.

40 (3) If either husband or wife is a resident and the other
41 is a nonresident, they shall file separate West Virginia
42 income tax returns on such single or separate forms as
43 may be required by the tax commissioner, and in such
44 event their tax liabilities shall be separate.

45 (c) Decedents.—The return for any deceased indi-

46 vidual shall be made and filed by his executor, adminis-
47 trator, or other person charged with his property.

48 (d) Individuals under a Disability.—The return for an
49 individual who is unable to make a return by reason of
50 minority or other disability shall be made and filed by his
51 guardian, committee, fiduciary or other person charged
52 with the care of his person or property (other than a
53 receiver in possession of only a part of his property), or
54 by his duly authorized agent.

55 (e) Estates and Trusts.—The return for an estate or
56 trust shall be made and filed by the fiduciary.

57 (f) Joint Fiduciaries.—If two or more fiduciaries are
58 acting jointly, the return may be made by any one of
59 them.

60 (g) Tax a Debt.—Any tax under this article, and any
61 increase, interest or penalty thereon, shall, from the time
62 it is due and payable, be a personal debt of the person
63 liable to pay the same, to the state of West Virginia.

64 (h) Cross Reference.—For provisions as to information
65 returns by partnerships, employers and other persons, see
66 section fifty-eight.

Sec. 52. *Time and Place for Filing Returns and Paying*
2 *Tax.*—A person required to make and file a return under
3 this article shall, without assessment, notice or demand,
4 pay any tax due thereon to the tax commissioner on or
5 before the date fixed for filing such return (determined
6 without regard to any extension of time for filing the re-
7 turn). The tax commissioner shall prescribe by regulation
8 the place for filing any return, declaration, statement, or
9 other document required pursuant to this article and for
10 payment of any tax.

Sec. 53. *Signing of Returns and Other Documents.*—
2 (a) General.—Any return, declaration, statement or other
3 document required to be made pursuant to this article
4 shall be signed in accordance with regulations or instruc-
5 tions prescribed by the tax commissioner. The fact that
6 an individual's name is signed to a return, declaration,
7 statement, or other document shall be prima facie evi-

8 dence for all purposes that the return, declaration, state-
9 ment or other document was actually signed by him.

10 (b) Partnerships.—Any return, statement or other
11 document required of a partnership shall be signed by one
12 or more partners. The fact that a partner's name is signed
13 to a return, statement, or other document shall be prima
14 facie evidence for all purposes that such partner is au-
15 thorized to sign on behalf of the partnership.

16 (c) Certifications.—The making or filing of any re-
17 turn, declaration, statement or other document or copy
18 thereof required to be made or filed pursuant to this
19 article, including a copy of a federal return, shall con-
20 stitute a certification by the person making or filing such
21 return, declaration, statement or other document or copy
22 thereof that the statements contained therein are true
23 and that any copy filed is a true copy.

Sec. 54. *Change of Resident Status during Year.*—(a)

2 General.—If an individual changes his status during his
3 taxable year from resident to nonresident, or from non-
4 resident to resident, he shall file one return as a resident
5 for the portion of the year during which he is a resident,
6 and one return as a nonresident for the portion of the year
7 during which he is a nonresident, subject to such excep-
8 tions as the tax commissioner may prescribe by regula-
9 tion.

10 (b) West Virginia Taxable Income as Resident and
11 Nonresident.—The West Virginia taxable income for the
12 portion of the year during which he is a resident shall be
13 determined under Part II of this article as if his taxable
14 year for federal income tax purposes were limited to the
15 period of his resident status. The West Virginia taxable
16 income for the remaining portion of his taxable year dur-
17 ing which he is a nonresident shall be determined under
18 Part III of this article as if his taxable year for federal
19 income tax purposes were limited to the period of his
20 nonresident status.

21 (c) Special Accruals.—(1) If an individual changes
22 his status from resident to nonresident, he shall, re-
23 gardless of his method of accounting, accrue for the
24 portion of the taxable year prior to such change of status

25 any items of income, gain, loss or deduction accruing prior
26 to the change of status, if not otherwise properly in-
27 cludible (whether or not because of an election to report
28 on an installment basis) or allowable for West Virginia
29 income tax purposes for such portion of the taxable year
30 or for a prior taxable year. The amounts of such accrued
31 items shall be determined with the applicable modifica-
32 tions described in sections twelve and fifteen as if such
33 accrued items were includible or allowable for federal
34 income tax purposes.

35 (2) If an individual changes his status from nonresi-
36 dent to resident, he shall, regardless of his method of ac-
37 counting, accrue for the portion of the taxable year prior
38 to such change of status any items of income, gain, loss or
39 deduction accruing prior to the change of status, other
40 than items derived from or connected with West Virginia
41 sources, if not otherwise properly includible (whether or
42 not because of an election to report on an installment
43 basis) or allowable for federal income tax purposes for
44 such portion of the taxable year or for a prior taxable
45 year. The amounts of such accrued items shall be de-
46 termined with the applicable modifications described in
47 sections twelve and fifteen as if such accrued items were
48 includible or allowable for federal income tax purposes.

49 (3) No item of income, gain, loss or deduction which
50 is accrued under this subsection shall be taken into ac-
51 count in determining West Virginia adjusted gross in-
52 come or the West Virginia itemized deduction for any
53 subsequent taxable period.

54 (4) The accruals under this subsection shall not be re-
55 quired if the individual files with the tax commissioner a
56 bond or other security acceptable to the tax commissioner,
57 conditioned upon the inclusion of amounts accruable
58 under this subsection in West Virginia adjusted gross in-
59 come for one or more subsequent taxable years as if the
60 individual had not changed his resident status.

61 (d) Minimum Tax.—Where two returns are required
62 under this section, the total of the taxes due thereon shall
63 not be less than would be due if the West Virginia taxable

64 incomes reportable on the two returns were includible in
65 one return.

66 (e) Prorations.—Where two returns are required under
67 this section, the West Virginia standard deduction allow-
68 able under sections fourteen and thirty-four, the West
69 Virginia personal exemptions allowable under sections
70 sixteen and thirty-six shall be prorated, under regulations
71 of the tax commissioner, between the two returns to re-
72 flect the portions of the entire taxable year during which
73 the individual was a resident and a nonresident.

Sec. 55. *Declarations of Estimated Tax.*—(a) Require-
2 ment of Declaration.—Every resident and nonresident in-
3 dividual shall make a declaration of his estimated tax for
4 the taxable year, containing such information as the tax
5 commissioner may prescribe by regulations or instruc-
6 tions, if his West Virginia adjusted gross income, other
7 than from wages on which tax is withheld under this
8 article, can reasonably be expected to exceed four hun-
9 dred dollars plus the sum of the West Virginia personal
10 exemptions to which he is entitled.

11 (b) Definition of Estimated Tax.—The term “estimated
12 tax” means the amount which an individual estimates
13 to be his income tax under this article for the taxable
14 year, less the amount which he estimates to be the sum of
15 any credits allowable against the tax.

16 (c) Joint Declaration of Husband and Wife.—A hus-
17 band and wife may make a joint declaration of estimated
18 tax as if they were one taxpayer, in which case the
19 liability with respect to the estimated tax shall be joint
20 and several. No joint declaration may be made if husband
21 and wife are separated under a decree of divorce or of
22 separate maintenance, or if they have different taxable
23 years. If a joint declaration is made but husband and
24 wife elect to determine their taxes under this article
25 separately, the estimated tax for such year may be treated
26 as the estimated tax of either husband or wife, or may
27 be divided between them, as they may elect.

28 (d) Time for Filing Declaration.—A declaration of
29 estimated tax of an individual other than a farmer shall
30 be filed on or before the fifteenth day of April of the tax-

31 able year, except that if the requirements of subsection
32 (a) are first met:

33 (1) After the first day of April and before the second
34 day of June of the taxable year, the declaration shall be
35 filed on or before the fifteenth day of June, or

36 (2) After the first day of June and before the second
37 day of September of the taxable year, the declaration shall
38 be filed on or before the fifteenth day of September, or

39 (3) After the first day of September of the taxable
40 year, the declaration shall be filed on or before the fif-
41 teenth day of January of the succeeding year.

42 (e) Declaration of Estimated Tax by a Farmer.—A
43 declaration of estimated tax of an individual having an
44 estimated West Virginia adjusted gross income from
45 farming for the taxable year which is at least two thirds
46 of his total estimated West Virginia adjusted gross income
47 for the taxable year may be filed at any time on or before
48 the fifteenth day of January of the succeeding year, in
49 lieu of the time otherwise prescribed.

50 (f) Declaration of Estimated Tax of Forty Dollars or
51 Less.—A declaration of estimated tax of an individual
52 having a total estimated tax for the taxable year of forty
53 dollars or less may be filed at any time on or before the
54 fifteenth day of January of the succeeding year under
55 regulations of the tax commissioner.

56 (g) Amendments of Declaration.—An individual may
57 amend a declaration under regulations of the tax com-
58 missioner.

59 (h) Return as Declaration or Amendment.—If on or
60 before the fifteenth day of February of the succeeding
61 taxable year an individual files his return for the taxable
62 year for which the declaration is required, and pays there-
63 with the full amount of the tax shown to be due on the
64 return:

65 (1) Such return shall be considered as his declaration,
66 if no declaration was required to be filed during the tax-
67 able year, but is otherwise required to be filed on or be-
68 fore the fifteenth day of January.

69 (2) Such return, if filed on or before the fifteenth day
70 of January, shall be considered an amendment permitted

71 by subsection (g) if the tax shown on the return is greater
72 than the estimated tax shown in a declaration previously
73 made.

74 (i) Fiscal Year.—This section shall apply to a taxable
75 year other than a calendar year by the substitution of the
76 months of such fiscal year for the corresponding months
77 specified in this section.

78 (j) Short Taxable Year.—An individual having a tax-
79 able year of less than twelve months shall make a declara-
80 tion in accordance with regulations of the tax commis-
81 sioner.

82 (k) Declaration for Individual under a Disability.—
83 The declaration of estimated tax for an individual who is
84 unable to make a declaration by reason of minority or
85 other disability shall be made and filed by his guardian,
86 committee, fiduciary or other person charged with the
87 care of his person or property (other than a receiver in
88 possession of only a part of his property), or by his duly
89 authorized agent.

Sec. 56. *Payments of Estimated Tax.*—(a) General.—

2 The estimated tax with respect to which a declaration is
3 required shall be paid as follows:

4 (1) If the declaration is filed on or before the fifteenth
5 day of April of the taxable year, the estimated tax shall
6 be paid in four equal installments. The first installment
7 shall be paid at the time of the filing of the declaration,
8 and the second, third and fourth installments shall be
9 paid on the following fifteenth day of June, fifteenth day
10 of September, and fifteenth day of January, respectively.

11 (2) If the declaration is filed after the fifteenth day of
12 April and not after the fifteenth day of June of the tax-
13 able year, and is not required to be filed on or before the
14 fifteenth day of April of the taxable year, the estimated
15 tax shall be paid in three equal installments. The first
16 installment shall be paid at the time of the filing of the
17 declaration, and the second and third installments shall
18 be paid on the following fifteenth day of September and
19 fifteenth day of January, respectively.

20 (3) If the declaration is filed after the fifteenth day of
21 June and not after the fifteenth day of September of the

22 taxable year, and is not required to be filed on or before
23 the fifteenth day of June of the taxable year, the estimated
24 tax shall be paid in two equal installments. The first in-
25 stallment shall be paid at the time of the filing of the
26 declaration, and the second shall be paid on the following
27 fifteenth day of January.

28 (4) If the declaration is filed after the fifteenth day of
29 September of the taxable year, and is not required to be
30 filed on or before the fifteenth day of September of the
31 taxable year, the estimated tax shall be paid in full at the
32 time of the filing of the declaration.

33 (5) If the declaration is filed after the time prescribed
34 therefor, or after the expiration of any extension of time
35 therefor, paragraphs (2), (3) and (4) of this subsection
36 shall not apply, and there shall be paid at the time of
37 such filing all installments of estimated tax payable at or
38 before such time, and the remaining installments shall be
39 paid at the times at which, and in the amounts in which,
40 they would have been payable if the declaration had been
41 filed when due.

42 (b) Farmers.—If an individual referred to in section
43 fifty-five (e) (relating to income from farming) makes a
44 declaration of estimated tax after the fifteenth day of Sep-
45 tember of the taxable year and on or before the following
46 fifteenth day of January, the estimated tax shall be paid
47 in full at the time of the filing of the declaration.

48 (c) Amendments of Declaration.—If any amendment
49 of a declaration is filed, the remaining installments, if any,
50 shall be rateably increased or decreased (as the case may
51 be) to reflect any increase or decrease in the estimated
52 tax by reason of such amendment, and if any amendment
53 is made after the fifteenth day of September of the taxable
54 year, any increase in the estimated tax by reason thereof
55 shall be paid at the time of making such amendment.

56 (d) Application to Short Taxable Year.—This section
57 shall apply to a taxable year of less than twelve months
58 in accordance with regulations of the tax commissioner.

59 (e) Fiscal Year.—This section shall apply to a taxable
60 year other than a calendar year by the substitution of the

61 months of such fiscal year for the corresponding months
62 specified in this section.

63 (f) Installments Paid in Advance.—An individual may
64 elect to pay any installment of his estimated tax prior to
65 the date prescribed for its payment.

Sec. 57. *Extensions of Time.*—(a) General.—The tax
2 commissioner may grant a reasonable extension of time
3 for payment of tax or estimated tax (or any installment),
4 or for filing any return, declaration, statement, or other
5 document required pursuant to this article, on such terms
6 and conditions as he may require. Except for a taxpayer
7 who is outside the United States, no such extension shall
8 exceed six months.

9 (b) Amount Determined as Deficiency.—The tax com-
10 missioner may, under regulations, extend the time for
11 payment of an amount determined as a deficiency for a
12 period not to exceed eighteen months from the date
13 designated for payment of the deficiency, and under ex-
14 ceptional circumstances, for a further period not to ex-
15 ceed twelve months. An extension under this subsection
16 may be granted only where it is established to the satisfac-
17 tion of the tax commissioner that the payment of a de-
18 ficiency upon the date designated for payment would
19 result in undue hardship. No extension shall be granted
20 if any part of the deficiency is due to intentional dis-
21 regard of rules and regulations or to fraud.

22 (c) Claims in Bankruptcy or Receivership Proceedings.
23 —Extension of time for payment of any portion of a claim
24 for tax allowed in bankruptcy, receivership or similar
25 proceedings, which is unpaid, may be granted subject to
26 the same provisions and limitations as in the case of a
27 deficiency in such tax.

28 (d) Furnishing of Security.—If any extension of time
29 is granted for payment of any tax or deficiency, the tax
30 commissioner may require the taxpayer to furnish a bond
31 or other security in an amount not exceeding twice the
32 amount for which the extension of time for payment is
33 granted on such terms and conditions as the tax commis-
34 sioner may require.

Sec. 58. *Requirements Concerning Returns, Notices, Records and Statements.*—(a) General.—The tax commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such person is liable under this article for tax or for collection of tax.

(b) Partnerships.—Every partnership having a resident partner or having any income derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two as in the case of a nonresident individual, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commissioner may by regulations and instructions prescribe.

(c) Information at Source.—The tax commissioner may prescribe regulations and instructions requiring returns of information to be made and filed on or before the twenty-eighth day of February of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this article. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of Qualification as Receiver, etc.—Every

41 receiver, trustee in bankruptcy, assignee for benefit of
42 creditors, or other like fiduciary shall give notice of his
43 qualification as such to the tax commissioner, as may be
44 required by regulation.

Sec. 59. *Report of Change in Federal Taxable Income.*—

2 If the amount of a taxpayer's federal taxable income re-
3 ported on his federal income tax return for any taxable
4 year is changed or corrected by the United States Internal
5 Revenue Service or other competent authority, or as the
6 result of a re-negotiation of a contract or subcontract with
7 the United States, the taxpayer shall report such change
8 or correction in federal taxable income within ninety days
9 after the final determination of such change, correction,
10 or re-negotiation, or as otherwise required by the tax
11 commissioner, and shall concede the accuracy of such
12 determination or state wherein it is erroneous. Any tax-
13 payer filing an amended federal income tax return shall
14 also file within ninety days thereafter an amended return
15 under this article, and shall give such information as the
16 tax commissioner may require. The tax commissioner
17 may by regulation prescribe such exceptions to the re-
18 quirements of this section as he deems appropriate.

Sec. 60. *Change of Election.*—Any election expressly

2 authorized by this article may be changed on such terms
3 and conditions as the tax commissioner may prescribe by
4 regulation.

PART V. WITHHOLDING OF TAX

Sec. 71. *Requirement of Withholding Tax from Wages.*

2 —(a) General.—Every employer maintaining an office
3 or transacting business within this state and making pay-
4 ment of any wages taxable under this article to a resident
5 or nonresident individual shall deduct and withhold from
6 such wages for each payroll period a tax computed in such
7 manner as to result, so far as practicable, in withholding
8 from the employee's wages during each calendar year an
9 amount substantially equivalent to the tax reasonably
10 estimated to be due under this article resulting from the
11 inclusion in the employee's West Virginia adjusted gross
12 income of his wages received during such calendar year.

13 The method of determining the amount to be withheld
14 shall be prescribed by regulations of the tax commissioner,
15 with due regard to the West Virginia withholding exemp-
16 tions of the employee; such method for the year one thou-
17 sand nine hundred sixty-one, shall prescribe rates of with-
18 holding estimated by the tax commissioner to result in
19 the withholding during the portion of said year during
20 which withholding is in effect of an amount substantially
21 equivalent to the tax due for the entire year one thousand
22 nine hundred sixty-one. This section shall not apply to
23 payments by the United States for service in the armed
24 forces of the United States.

25 (b) Withholding Exemptions.—For purposes of this
26 section:

27 (1) An employee shall be entitled to the same number
28 of West Virginia withholding exemptions as the number
29 of withholding exemptions to which he is entitled for fed-
30 eral income tax withholding purposes. An employer may
31 rely upon the number of federal withholding exemptions
32 claimed by the employee, except where the employee
33 claims a higher number of West Virginia withholding
34 exemptions.

35 (2) The amount of each West Virginia exemption shall
36 be six hundred dollars whether the individual is a resi-
37 dent or a nonresident.

38 (c) Exception for Certain Nonresidents.—If the in-
39 come tax law of another state of the United States or of
40 the District of Columbia results in its residents being al-
41 lowed a credit under section forty sufficient to offset all
42 taxes required by this article to be withheld from the
43 wages of an employee, the tax commissioner may by reg-
44 ulation relieve the employers of such employees from the
45 withholding requirements of this article with respect to
46 such employees.

Sec. 72. *Information Statement for Employee.*—Every
2 employer required to deduct and withhold tax under this
3 article from the wages of an employee, or who would have
4 been required so to deduct and withhold tax if the em-
5 ployee had claimed no more than one withholding exemp-

tion, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before the fifteenth day of February of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the date on which the last payment of the wages is made, a written statement as prescribed by the tax commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the tax commissioner shall prescribe.

Sec. 73. *Credit for Tax Withheld.*—Wages upon which tax is required to be withheld shall be taxable under this article as if no withholding were required, but any amount of tax actually deducted and withheld under this article in any calendar year shall be deemed to have been paid to the tax commissioner on behalf of the person from whom withheld, and such persons shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the tax commissioner.

Sec. 74. *Employer's Return and Payment of Withheld Taxes.*—(a) General.—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld; but the tax commissioner may, by regulation, provide that every such employer shall on or before the fifteenth day of each month pay over to the tax commissioner, or a depository designated by the tax commissioner, the taxes so required to be deducted and withheld if such taxes aggregate one hundred dollars or more for the preceding calendar month. Where the aggregate amount so deducted and withheld by any employer is less than twenty-five dollars in a calendar quarter and the aggregate for the calendar year can reasonably be expected to be less than one hundred dollars, the tax

19 commissioner may by regulation permit an employer to
20 file an annual return. The tax commissioner may, if he
21 believes such action necessary for the protection of the
22 revenues, require any employer to make such return and
23 pay to him the tax deducted and withheld at any time, or
24 from time to time.

25 (b) *Deposit in Trust for Tax Commissioner.*—When-
26 ever any employer fails to collect, truthfully account for,
27 pay over the tax, or make returns of the tax as required
28 in this section, the tax commissioner may serve a notice
29 requiring such employer to collect the taxes which become
30 collectible after service of such notice, to deposit such
31 taxes in a bank approved by the tax commissioner, in a
32 separate account, in trust for and payable to the tax com-
33 missioner, and to keep the amount of such tax in such
34 account until payment over to the tax commissioner.
35 Such notice shall remain in effect until a notice of can-
36 cellation is served by the tax commissioner.

Sec. 75. *Employer's Liability for Withheld Taxes.*—
2 Every employer required to deduct and withhold tax un-
3 der this article is hereby made liable for such tax. To the
4 extent not inconsistent with the provisions of this article,
5 all the provisions of sections eighty to ninety-three
6 of this article relating to assessment and collection of
7 taxes, and to penalties, additions to tax, and interest in
8 respect thereto, shall apply to every employer required
9 to withhold tax under this article. For such purposes, any
10 amount required to be withheld and paid over to the tax
11 commissioner shall be considered the tax of the employer.
12 Any amount of tax actually deducted and withheld under
13 this article shall be held to be a special fund in trust for
14 the tax commissioner. No employee shall have any right
15 of action against his employer in respect to any moneys
16 deducted and withheld from his wages and paid over to
17 the tax commissioner in compliance or in intended com-
18 pliance with this article.

Sec. 76. *Employer's Failure to Withhold.*—If an em-
2 ployer fails to deduct and withhold tax as required, and
3 thereafter the tax against which such tax may be credited

4 is paid, the tax so required to be deducted and withheld
5 shall not be collected from the employer, but the em-
6 ployer shall not be relieved from liability for any penal-
7 ties, interest, or additions to the tax otherwise applicable
8 in respect of such failure to deduct and withhold.

PART VI. PROCEDURE AND ADMINISTRATION

Sec. 80. *General Provisions.*—(a) *Regulations.*—The
2 tax commissioner shall administer and enforce the tax
3 herein imposed and shall issue all needful regulations,
4 rules and interpretations thereof. All regulations, rules
5 and interpretations issued by the tax commissioner shall
6 be filed with the secretary of state of West Virginia as
7 provided in section three, article two, chapter five of
8 this code: *Provided*, That all such regulations, rules and
9 interpretations originally issued by the tax commissioner
10 during the year one thousand nine hundred sixty-one shall
11 take effect immediately upon the filing of copies thereof
12 in the office of the secretary of state.

13 (b) *Investigations.*—The tax commissioner, for the
14 purpose of ascertaining the correctness of any returns or
15 for the purpose of making an estimate of taxable income
16 of any person, shall have the power to examine or cause
17 to be examined, by any agent or any representative desig-
18 nated by the tax commissioner, any books, papers, records
19 or memoranda bearing upon the matters required to be
20 included in the return and may require the attendance of
21 the person rendering the return or the attendance of any
22 other person having knowledge in the premises and may
23 take testimony and may require material proof with pow-
24 er to administer oath to such person or persons.

25 (c) *Returns by Tax Commissioner.*—If any taxpayer
26 fails to file a return at the time required by law or by reg-
27 ulation made under authority of law, the tax commissioner
28 may proceed to make a return from any information
29 available.

30 (d) *Secrecy of Returns.*—Except when required in an
31 official investigation or proceedings in court involving
32 taxes payable under this article and except as provided in
33 subsection (e) of this section, it shall be unlawful for

34 any officer or employee of the state to divulge or make
35 known in any manner the amount of income or any par-
36 ticulars set forth or disclosed in any report, declaration or
37 return required to be filed with the tax commissioner by
38 this article or any regulation of the tax commissioner
39 issued hereunder.

40 (e) Reciprocal Exchange.—The tax commissioner may
41 permit the proper officer of the United States or any state,
42 territory or political subdivision of the United States, or
43 his authorized representative, to inspect reports, declara-
44 tions or returns filed with the tax commissioner or may
45 furnish to such officer or representative a copy of any such
46 document provided such other jurisdiction grants sub-
47 stantially similar privileges to the tax commissioner or to
48 the attorney general of this state. Subsection (d) of this
49 section shall not be construed to prohibit the publication
50 of statistics so classified as to prevent the identification of
51 particular reports and the items thereof.

Sec. 81. *Assessment.*—(a) Taxes Shown on Return.—

2 The tax commissioner shall assess all taxes determined
3 by the taxpayer or the tax commissioner to be due as
4 shown by any return filed under this article and may at
5 any time within the period prescribed for assessment
6 make a supplemental assessment whenever it is ascer-
7 tained that any assessment is imperfect or incomplete in
8 any material respect.

9 (b) Assessment of Deficiencies.—Whenever the tax
10 commissioner shall determine that any tax due under this
11 article has not been paid in full, the tax commissioner
12 shall make an assessment against the taxpayer of such
13 deficiency in tax, addition to tax, interest or penalties as
14 he may find to be due, and shall give the taxpayer written
15 notice of such assessment.

16 (c) Abatement of Assessments.—The tax commis-
17 sioner may abate in whole or in part any assessment
18 which he shall determine to be erroneous.

Sec. 82. *Deficiency Procedure.*—(a) Informal Proceed-
2 ings.—Prior to assessing a deficiency as provided in sec-
3 tion eighty-one, the tax commissioner may notify the tax-

4 payer in writing that he proposes to assess a deficiency
5 and afford the taxpayer in person or by his representative
6 an opportunity to be heard with respect to the proposed
7 deficiency, either by the filing of a written protest against
8 the proposed deficiency or by informal conference, or both.

9 (b) Judicial Review of Proposed Assessments.—At
10 least ninety days prior to assessing a deficiency (except a
11 deficiency occurring as the result of a mathematical error
12 on the face of the return), the tax commissioner shall no-
13 tify the taxpayer in writing of the amount of the de-
14 ficiency to be assessed and the reasons therefor. Such
15 notice shall advise the taxpayer that the assessment will
16 be made unless the taxpayer within said ninety-day period
17 either pays the amount to be assessed or commences suit
18 for a declaratory judgment or decree as to his liability
19 therefor. If the taxpayer neither pays the amount of the
20 deficiency proposed nor commences a suit for a declara-
21 tory judgment or decree within said ninety-day period,
22 the assessment shall be made. A taxpayer who has been
23 notified of the determination of a deficiency under this
24 article may apply to a circuit court for a declaratory
25 judgment or decree under article thirteen, chapter fifty-
26 five of this code. In the case of a resident taxpayer, appli-
27 cation may be made to the circuit court of the county of
28 the taxpayer's residence. In the case of a nonresident tax-
29 payer, such application may be made to the circuit court
30 of the county in which the taxpayer is employed, or if the
31 taxpayer is not employed within the state, to the circuit
32 court of the county in which income-producing property
33 of the taxpayer is situated. In all other cases, such appli-
34 cations shall be made to the circuit court of the county in
35 which the seat of the state government is located. No as-
36 sessment shall be made of any proposed deficiency while
37 proceedings to secure a declaratory judgment or decree
38 are pending. In any such proceedings all questions re-
39 lating to the liability of the taxpayer for the taxable year
40 or years shall be determined. The tax commissioner shall
41 have the burden of proof on any issue raised by him sub-
42 sequent to the commencement of the proceedings.

Sec. 83. *Collection.*—The tax commissioner shall collect

2 the taxes, additions to tax, interest and penalties imposed
3 by this article. In addition to all other remedies available
4 for the collection of debts due the state, the tax commis-
5 sioner may proceed by foreclosure of the lien provided in
6 section eighty-four or by distraint and sale under section
7 eighty-five. Every assessment made by the tax commis-
8 sioner under this article shall constitute a judgment and
9 may be collected as judgments are collected.

Sec. 84. *Lien*.—If any person liable to pay any tax as-
2 sessed under this article, neglects or refuses to pay the
3 same within ten days after written notice of assessment
4 of the same, the amount of said tax, including any addi-
5 tions to tax, interest and penalties, together with any
6 costs that may accrue, shall become a lien in favor of
7 the state of West Virginia upon all property and rights
8 to property whether real or personal belonging to such
9 person.

10 The lien imposed by this section shall arise at the time
11 the assessment is made and shall continue until the lia-
12 bility for the amount so assessed shall be satisfied or be-
13 comes unenforceable by reason of lapse of time.

14 The lien imposed by this section shall be subject to the
15 restrictions and conditions embodied in article ten-c,
16 chapter thirty-eight of this code and any amendment
17 made or which may hereafter be made thereto.

18 The tax commissioner, pursuant to regulations pre-
19 scribed by him, may issue his certificate of release of any
20 lien imposed pursuant to this section upon finding that
21 the liability for the amount assessed has been fully satis-
22 fied or has become legally unenforceable or is adequately
23 secured by bond or other security.

Sec. 85. *Distraint*.—If any tax imposed by this article
2 required to be paid at the time a return is filed or any
3 portion of such tax be not so paid or if an assessment of
4 the tax be made by the tax commissioner and notice
5 thereof be given as required by this article or if any in-
6 stallment of a tax be not paid within thirty days after the
7 same becomes due, the tax commissioner may issue a war-
8 rant directed to the sheriff of any county of the state com-

9 manding him to levy upon and sell the real and personal
10 property of the person owing the same found within his
11 county for the payment of the amount thereof with the
12 added penalties, interest, and the cost of executing the
13 warrant, and to return such warrant to the tax commis-
14 sioner and pay to him the money collected by virtue
15 thereof by a time to be therein specified and not less than
16 sixty days from the date of such warrant. In case the tax
17 commissioner shall find that the collection of a tax would
18 be jeopardized by the delay of thirty days as above pro-
19 vided, he may issue his warrant within said period. The
20 sheriff shall within five days after the receipt of the war-
21 rant file with the clerk of the county court a copy thereof
22 and thereupon the clerk shall enter in the judgment
23 docket the name of the taxpayer mentioned in the war-
24 rant and the amount of the tax or portion thereof and
25 penalties for which the warrant is issued and the date
26 when such copy is filed, and thereupon the amount so
27 docketed shall become a lien upon the title to and interest
28 in real property or chattels real of the person against
29 whom it is issued in the same manner as a judgment duly
30 docketed in the office of such clerk. The said sheriff shall
31 thereupon proceed upon the same in all respects, with like
32 effect, and in the same manner prescribed by law in re-
33 spect to executions issued against property upon judg-
34 ments of a court of record, and shall be entitled to the
35 same fees for his services in executing the warrant, to be
36 collected in the same manner. In the discretion of the tax
37 commissioner, a warrant of like terms, force and effect
38 may be issued and directed to any officer or employee of
39 the tax commissioner and in the execution thereof such
40 officer or employee shall have all the powers conferred by
41 law upon sheriffs, but shall be entitled to no fee or com-
42 pensation in excess of actual expenses paid in the per-
43 formance of such duty. If a warrant be returned not satis-
44 fied in full, the tax commissioner shall have the same
45 remedies to enforce the claim for taxes against the tax-
46 payer as if the state had recovered judgment against the
47 taxpayer for the amount of the tax.

2 Sec. 86. *Overpayments, Credits and Refunds.*—(a) Re-
3 funding of Overpayments.—In the case of any overpay-
4 ment of any tax, addition to tax, interest or penalties im-
5 posed by this article, whether by reason of error on the
6 part of the taxpayer, excessive withholding, or an er-
7 roneous assessment of tax, the tax commissioner shall re-
8 fund the amount of the overpayment to the taxpayer. If
9 any overpayment is not refunded within six months from
10 the date a claim for the refund thereof is filed by the tax-
11 payer, interest shall be paid upon the amount of such
12 overpayment at the rate of six per centum from the date
13 of the filing of the claim for the refund thereof. The tax
14 commissioner may prescribe by regulation the form and
15 content of a claim for refund.

16 (b) Credits.—At the election of the taxpayer, the
17 amount of any overpayment may be applied by the tax-
18 payer as a credit against his liability for taxes under this
19 article for the subsequent year.

20 (c) Petitions for Refund.—In the event that any over-
21 payment of tax, addition to tax, interest or penalty paid
22 under this article is not refunded or credited pursuant to
23 subsection (a) or (b) of this section within six months
24 after the filing of a claim for the refund thereof, or in the
25 event such claim is denied by the tax commissioner, the
26 taxpayer may file a petition for refund pursuant to sec-
27 tion two-a, article one, chapter eleven of this code. Not-
28 withstanding the period of limitations prescribed in said
29 section, a taxpayer may file a petition for refund at the
30 latest within six months after a final determination by
31 the United States Internal Revenue Service or other com-
32 petent authority of an overpayment in the taxpayer's fed-
33 eral income tax liability.

2 Sec. 87. *Limitations on Assessment.*—(a) General Rule.
3 —The amount of any tax imposed by this article shall be
4 assessed within three years after the due date of the re-
5 turn: *Provided*, That in the case of a false or fraudulent
6 return filed with the intent to evade tax or in the case no
7 return is filed, the tax may be assessed or a proceeding in
8 court for the collection of such tax may be begun at any
9 time: *Provided further*, That in the event the tax commis-

9 sioner notifies the taxpayer of a deficiency pursuant to
10 section eighty-two (b) of this article, within three years
11 after the due date of the return, the deficiency may be
12 assessed within ninety days from the date of such notice
13 or from the final determination of any declaratory judg-
14 ment proceeding brought by the taxpayer.

15 (b) Extension by Agreement.—The tax commissioner
16 and the taxpayer may by a written agreement extend the
17 period within which the tax may be assessed in accordance
18 with regulations promulgated by the state tax commis-
19 sioner.

20 (c) Deficiency in Federal Tax.—In the event of a final
21 determination by the United States Internal Revenue
22 Service or other competent authority of a deficiency in
23 the taxpayer's federal income tax liability, the period of
24 limitation upon assessment of a deficiency reflecting said
25 final determinations in the tax imposed by this article
26 shall not expire until ninety days after the tax commis-
27 sioner is advised of the determination by the taxpayer
28 as provided in section fifty-nine.

Sec. 88. *Limitations on Collection.*—No proceeding
2 shall be maintained in any court to collect any tax im-
3 posed by this article or to subject any property to sale
4 under the lien provided for in section eighty-four of this
5 article after the expiration of the period of limitation on
6 assessment provided in section eighty-seven, unless the
7 tax was assessed prior to the expiration of such period.

Sec. 89. *Interest.*—Taxes imposed by this article, if not
2 paid when due, shall bear interest at the rate of six per
3 centum per annum from the due date of the return. Each
4 assessment made by the tax commissioner shall bear in-
5 terest at the rate of six per centum per annum from the
6 date thereof if not paid within ten days from receipt of
7 notice thereof by the taxpayer.

Sec. 90. *Additions to Tax.*—(a) Delinquency.—In the
2 case of any failure to make or file a return or whenever
3 the full amount of the tax or any portion or deficiency
4 thereof has not been paid, as required by this article, un-
5 less it be shown that such failure be due to reasonable

6 cause and not due to willful neglect there shall be added
7 to the tax five per centum if a failure is not for more than
8 thirty days with an additional five per centum for each
9 additional thirty days or fraction thereof during which
10 failure shall continue not to exceed twenty-five per
11 centum in the aggregate. The amount so added to any tax
12 shall be collected at the same time and in the same man-
13 ner and as a part of the tax unless the tax has been paid
14 before the discovery of the neglect by the tax commis-
15 sioner in which case the amount so added shall be col-
16 lected in the same manner as the tax: *Provided*, That in
17 all cases of delinquency, interest shall be assessed.

18 (b) *Fraud.*—In the case of the filing of any false or
19 fraudulent return with intent to evade the tax imposed
20 by this article, or in the case of a willful failure to file a
21 return with intent to evade the tax, there shall be added
22 to the tax an amount equal to fifty per centum thereof
23 which shall be in lieu of the addition to tax provided for in
24 subsection (a) of this section. The burden of proving
25 fraud, willfulness, or intent to evade tax shall be upon
26 the tax commissioner.

Sec. 91. *Penalties.*—(a) *Failure to Collect, Account*
2 for, and Pay over Tax, or Attempt to Defeat or Evade
3 Tax.—Any person required under this article to collect,
4 account for, and pay over any tax imposed by this article,
5 who willfully fails to truthfully account for and pay over
6 such tax, and any person who willfully attempts in any
7 manner to evade or defeat any tax imposed by this article
8 or the payment thereof, shall, in addition to other penal-
9 ties provided by law, be liable to a money penalty equal
10 to the total amount evaded, or not collected, or not ac-
11 counted for and paid over.

12 (b) *Fraudulent Statement or Failure to Furnish State-*
13 *ment to Employee.*—Any person required under the pro-
14 visions of section seventy-two of this article to furnish a
15 statement to an employee who willfully furnishes a false
16 or fraudulent statement, or who willfully fails to furnish
17 a statement in the manner, at the time, and showing the
18 information required by said section, or regulations pre-

19 scribed thereunder, shall for each such failure be subject
20 to a money penalty of fifty dollars.

21 (c) Person Defined.—The term “person” as used in this
22 section includes, but is not limited to, an officer or em-
23 ployee of a corporation, or a member or employee of a
24 partnership, who, as such officer, employee or member, is
25 under a duty to perform the act in respect of which the
26 violation occurs.

27 (d) Collection of Penalty.—Any money penalty may
28 be collected in the same way as the tax imposed by this
29 article.

Sec. 92. *Crimes.*—(a) Failure to File Returns, Submit
2 Information, or Pay Tax.—Any person required under
3 this article to pay any tax or estimated tax, or required
4 by law to make a return or declaration, keep any records,
5 or supply any information, for the purposes of the com-
6 putation, assessment, withholding, or collection of any
7 tax or estimated tax imposed by this article, who, at the
8 time or times required by law, willfully fails to pay such
9 tax or estimated tax, make such return or declaration,
10 keep such records, or supply such information, or willfully
11 furnishes false and fraudulent information, shall, in addi-
12 tion to other penalties provided by law, be guilty of a
13 misdemeanor and, upon conviction thereof, be fined not
14 more than one thousand dollars or imprisoned for not
15 more than one year, or both, together with the costs of
16 prosecution.

17 (b) Failure to Collect and Pay over Tax, or Attempt
18 to Defeat or Evade Tax.—Any person required under this
19 article to collect, account for, and pay over any tax im-
20 posed by this article, who willfully fails to collect or with-
21 hold or truthfully to account for and pay over such tax,
22 and any person who willfully attempts in any manner to
23 evade or defeat any tax imposed by this article or the pay-
24 ment thereof, shall, in addition to other penalties provided
25 by law, be guilty of a misdemeanor and, upon conviction
26 thereof, be fined not more than one thousand dollars or
27 imprisoned for not more than one year, or both, together
28 with the costs of prosecution.

29 (c) False Returns or Certification.—Any person who

30 willfully makes and subscribes a return which he does
31 not believe to be true and correct as to every material
32 matter, or who willfully makes a certification (as defined
33 in subsection (c) of section fifty-three of this article) that
34 is false, shall be guilty of a misdemeanor, and, upon con-
35 viction thereof, shall be fined not more than one thousand
36 dollars or imprisoned for not more than one year, or both,
37 together with the costs of prosecution.

38 (d) Person Defined.—The term “person” as used in
39 this section includes, but is not limited to, an officer or
40 employee of a corporation, or a member or employee of
41 a partnership, who, as such officer, employee or member,
42 is under a duty to perform the act in respect of which the
43 violation occurs.

44 (e) State Officers or Employees.—Any officer or em-
45 ployee of the state who violates section eighty (d) of this
46 article shall be guilty of a misdemeanor, and, upon con-
47 viction thereof, shall be fined not more than one thousand
48 dollars or imprisoned for not more than one year, or both,
49 together with the costs of prosecution.

50 (f) Prima Facie Evidence.—The certificate of the tax
51 commissioner signed by his own hand to the effect that a
52 tax has not been paid, that a return has not been filed, or
53 that information has not been supplied as required by or
54 under the provisions of this article shall be prima facie
55 evidence that such tax has not been paid, that such return
56 has not been filed, or that such information has not been
57 supplied.

58 (g) Venue.—The tax commissioner or any other public
59 officer initiating proceedings against any person under
60 this section shall do so in the county wherein such person
61 resides, or if such person be a nonresident, then in the
62 county wherein such nonresident is employed, or, if such
63 nonresident is not employed in this state then in the
64 county in which the seat of the state government is
65 located.

2 Sec. 93. *Disposition of Revenue.*—Of the revenue col-
3 lected under this article the state treasurer shall retain
4 in his hands such amount as the tax commissioner may
determine to be necessary for refunds to which taxpayers

5 shall be entitled under this article. The state treasurer
6 shall, after reserving such refund fund, on or before the
7 tenth day of each month, pay all interest, penalties and
8 taxes collected under this article and remaining to his
9 credit in banks, banking houses or trust companies at the
10 close of business on the last day of the preceding month,
11 into the general fund of the state treasury.

Sec. 94. *Effective Date; Severability.*—(a) Effective
2 Date.—The provisions of this article shall take effect im-
3 mediately. Such provisions shall apply to all taxable
4 years ending on or after the thirty-first day of December,
5 one thousand nine hundred sixty-one, and to the entirety
6 of each such year, including that part which has elapsed
7 prior to the effective date of this article. Such provisions
8 shall also apply to taxable years beginning prior to and
9 ending in the year one thousand nine hundred sixty-one,
10 but the tax imposed for any such year shall be one
11 twelfth of a tax for the full year multiplied by the num-
12 ber of months elapsed from the first day of January, one
13 thousand nine hundred sixty-one, until the end of the tax-
14 able year.

15 (b) Severability.—If any provision of this article or
16 the application thereof shall for any reason be adjudged
17 by any court of competent jurisdiction to be invalid, such
18 judgment shall not affect, impair or invalidate the re-
19 mainder of said article, but shall be confined in its opera-
20 tion to the provision thereof directly involved in the con-
21 troversy in which such judgment shall have been ren-
22 dered, and the applicability of such provision to other
23 persons or circumstances shall not be affected thereby.

CHAPTER 156

(House Bill No. 419—By Mr. Speaker, Mr. Singleton)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to repeal chapter one hundred seventy-two, acts of
the Legislature, regular session, one thousand nine hun-
dred fifty-nine, and chapter twenty-six, acts of the Legis-

lature, regular session, one thousand nine hundred sixty, and to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, numbered and designated article twenty-two, relating to the imposition of a state excise tax upon the privilege of transferring real property and providing penalties for violations thereof.

Article 22. Excise Tax on Privilege of Transferring Real Property.

Section

1. Definitions.
2. Rate of tax; when and by whom payable.
3. Payment from proceeds of judicial sale.
4. Documentary stamps; affixing; cancellation; declaration of value.
5. Commissioner to provide for sale of stamps; rules and regulations.
6. Duties of clerk; declaration of consideration or value; remittance and use of proceeds.
7. Failure to affix stamps.
8. Penalty for recording without documentary stamp; effect.
9. Unlawful acts; penalty.
10. Erroneous collections; refund.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred seventy-two, acts of the Legislature, regular session, one thousand nine hundred fifty-nine, and chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred sixty, be, and the same are, hereby repealed; and that chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be, and the same is, hereby amended by adding thereto a new article, designated and numbered article twenty-two, to read as follows:

- Section 1. *Definitions.*—The following words when
- 2 used in this chapter shall have meanings ascribed to them
 - 3 in this section, except in those instances where the con-
 - 4 text clearly indicates a different meaning:
 - 5 “Association” means a partnership, limited partnership,
 - 6 or any other form of unincorporated enterprise, owned
 - 7 or conducted by two or more persons.
 - 8 “Corporation” means a corporation or joint-stock asso-

9 ciation, organized under the laws of this state, the United
10 States or any other state, territory, or foreign country, or
11 dependency, including, but not limited to, banking insti-
12 tutions.

13 "Commissioner" means the state tax commissioner.

14 "Document" means any deed, or instrument or writing
15 whereby any real property within this state or any in-
16 terest therein shall be granted, conveyed or otherwise
17 transferred to the grantee, purchaser, or any other person;
18 but does not include wills, transfer of real property
19 where the value of the property transferred is one hun-
20 dred dollars or less, testamentary or inter vivos trusts,
21 deeds of partition, deeds made pursuant to mergers of
22 corporations, deeds made by a subsidiary corporation to
23 its parent corporation for no consideration other than
24 the cancellation or surrender of the subsidiary's stock,
25 leases, transfers between husband and wife, between
26 parent and child without consideration, transfers with-
27 out consideration between a principal and straw par-
28 ty for any purpose, transfers to or between volun-
29 tary charitable or educational associations or trustees
30 thereof and like nonprofit corporations having the same
31 or similar purposes, quitclaim or corrective deeds with-
32 out consideration, transfers to or from the United States,
33 the state of West Virginia, or to or from any of their
34 instrumentalities, agencies or political subdivisions, by
35 gift, dedication, deed or condemnation proceedings, or
36 mortgages or deeds of trust given as security for a debt.

37 "Person" means every natural person, association, or
38 corporation. Whenever used in any clause prescribing
39 and imposing a fine or imprisonment, or both, the term
40 "person" as applied to associations, shall mean the part-
41 ners or members thereof, and, as applied to corporations,
42 the officers thereof.

43 "Transaction" means the delivering, accepting, or pre-
44 senting for recording of a document.

45 "Value" means in the case of any document not a gift,
46 the amount of the full actual consideration therefor, paid
47 or to be paid, including the amount of any lien or liens
48 assumed; in the case of a gift, or any other document
49 without consideration, the actual monetary value of the

50 property conveyed or transferred. In the event any docu-
51 ment includes real property or any interest therein lying
52 outside the state of West Virginia or includes personal
53 property, value shall be the proportion of the consider-
54 ation paid in case of the transfer for consideration, or
55 the proportion of the true and actual value in case of a
56 gift, which the actual value of the real property located
57 in West Virginia bears to the total actual value of all
58 the property, real or personal, transferred by the docu-
59 ment. The value as herein defined shall be stated in the
60 declaration of consideration or value provided for in sec-
61 tion six hereof.

Sec. 2. *Rate of Tax; When and by Whom Payable.*—

2 Every person who delivers, accepts or presents for re-
3 cording any document, or in whose behalf any document
4 is delivered, accepted or presented for recording, shall
5 be subject to pay for and in respect to the transaction or
6 any part thereof, a state excise tax upon the privilege
7 of transferring title to real estate at the rate of one dollar
8 and ten cents for each five hundred dollars value or
9 fraction thereof as represented by such document as de-
10 fined in section one hereof, which state tax shall be pay-
11 able at the time of delivery, acceptance or presenting for
12 recording of such document: *Provided, however,* That
13 only one such state tax shall be paid on any one document;
14 and the same shall be paid by the grantor therein unless
15 the grantee accepts the same without such tax having
16 been paid, in which event such tax shall be paid by the
17 grantee: *Provided further,* That on any transfer of real
18 property from a trustee or a county clerk transferring
19 real estate sold for taxes, such tax shall be paid by the
20 grantee.

Sec. 3. *Payment from Proceeds of Judicial Sale.*—The
2 tax herein imposed shall be fully paid, and have priority
3 out of the proceeds of any judicial sale of real estate
4 before any other obligation, claim, lien, judgment, estate
5 or costs of the sale and of the writ upon which the sale
6 is made, and the sheriff, commissioner, or other officer,
7 conducting said sale, shall pay the tax herein imposed
8 out of the first moneys paid to him in connection there-
9 with.

Sec. 4. *Documentary Stamps; Affixing; Cancellation; Declaration of Value.*—The payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person executing, delivering or presenting for recording such document. Each stamp shall be affixed in such manner that its removal will require the continued application of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: *Provided, That* the commissioner may prescribe such other method of cancellation as he may deem expedient.

Sec. 5. *Commissioner to Provide for Sale of Stamps; Rules and Regulations.*—The commissioner shall prescribe, prepare and furnish adhesive stamps of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this article, to the clerks of the various county courts whose duty it shall be to offer said stamps for sale.

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

(a) The method and means to be used in affixing or cancelling of stamps in substitution for or in addition to the method and means provided in this article.

(b) The denominations and sale of stamps.

(c) Any other matter or thing pertaining to the administration and enforcement of the provisions of this article.

Sec. 6. *Duties of Clerk; Declaration of Consideration or Value; Remittance and Use of Proceeds.*—When any instrument on which the tax as herein provided is imposed is offered for recordation, the clerk of the county court shall ascertain and compute the amount of the tax due thereon and shall ascertain if stamps in the proper amount are attached thereto as a prerequisite to acceptance of the instrument for recordation.

When offered for recording on or after the first day of July, one thousand nine hundred fifty-nine, each instru-

ment subject to the tax as herein provided shall have appended on the face or at the end thereof, a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby conveyed. Such declaration may be in the following language:

"DECLARATION OF CONSIDERATION OR VALUE

I hereby declare:

(a) The total consideration paid for the property conveyed by the document to which this declaration is appended is \$.....; or,

(b) The true and actual value of the property transferred by the document to which this declaration is appended is, to the best of my knowledge and belief \$.....; or,

(c) The proportion of all the property included in the document to which this declaration is appended which is real property located in West Virginia is%; the value of all the property \$.....; the value of real estate in West Virginia is \$.....; or,

(d) This deed conveys real estate located in more than one county in West Virginia; the total consideration paid for, or actual cash value of, all the real estate located in West Virginia conveyed by this document is \$.....; and documentary stamps showing payment of all of the excise tax on all of said real estate are attached to an executed counterpart of this deed recorded in county.

Given under my hand this day of, 19

Signature.....

(Indicate whether grantor, grantee, or other interest in conveyance).

.....
Address

Such declaration shall be considered by the clerk in ascertaining the correct number of stamps required, and if declaration (d) is used no stamps shall be required on the duplicate deed to which it is attached and such dupli-

50 cate deed shall be admitted to record, and when recorded
51 shall have the same effect for all purposes as if stamps
52 were attached thereto.

53 The clerk shall, at the end of the month, pay all of the
54 proceeds collected from the sale of stamps to the state
55 auditor in the manner provided by law which shall be
56 credited to the state general revenue fund.

Sec. 7. *Failure to Affix Stamps.*—No document upon
2 which a tax is imposed by this article shall be made the
3 basis of any action or other legal proceeding, nor shall
4 proof thereof be offered or received in evidence in any
5 court of this state, nor shall the same be recorded in the
6 office of any clerk of any county court of this state,
7 unless or until a documentary stamp or stamps as pro-
8 vided in this article have been affixed thereto, but if
9 recorded without stamps or without the proper amount
10 of stamps, said document shall nevertheless be duly of
11 record except that no copy thereof may be admitted in
12 evidence until the proper amount of stamps has been
13 placed on the original or such copy.

Sec. 8. *Penalty for Recording Without Documentary*
2 *Stamp; Effect.*—Any clerk who shall record any docu-
3 ment upon which a tax is imposed by this article without
4 the proper documentary stamp or stamps affixed thereto
5 as required by this article as is indicated in such docu-
6 ment or accompanying declaration shall, upon conviction
7 in a court of competent jurisdiction, be fined fifty dollars.
8 Failure of the clerk to require the attachment of the
9 proper number of stamps shall not affect the record-
10 ability of the instrument, if otherwise recordable and
11 regularly recorded. The failure to pay this tax and to
12 attach the required stamps shall not be or constitute a
13 lien or claim against the property conveyed by the re-
14 corded instrument.

Sec. 9. *Unlawful Acts; Penalty.*—It shall be unlawful
2 for any person to:

3 (1) Knowingly make a false statement in the declara-
4 tion provided for in section six of this article; or,

5 (2) Fraudulently affix to any document upon which
6 tax is imposed by this article any previously used docu-

7 mentary stamp which has been cut, torn or removed from
8 any other document upon which tax is imposed by this
9 article, or any forged or counterfeited stamp, or any im-
10 pression of any forged or counterfeited stamp, die, plate
11 or other article; or,

12 (3) Wilfully remove or alter the cancellation marks
13 of any documentary stamp, or restore any such documen-
14 tary stamp, with intent to use or cause the same to be
15 used after it has already been used, or knowingly buy,
16 sell, offer for sale, or give away any such altered or re-
17 stored stamp to any person for use, or knowingly use
18 the same; or,

19 (4) Knowingly have in his possession any altered or
20 restored documentary stamp which has been removed
21 from any document upon which tax is imposed by this
22 article: *Provided*, That the possession of such stamps shall
23 be prima facie evidence of an intent to violate the pro-
24 visions of this clause; or,

25 (5) Knowingly or wilfully prepare, keep, sell, offer for
26 sale, or have in his possession, any forged or counter-
27 feited documentary stamps.

28 Any person violating any of the provisions of this sec-
29 tion shall be guilty of a misdemeanor, and, upon con-
30 viction thereof, shall be sentenced to pay a fine of not
31 less than one hundred dollars nor more than one thousand
32 dollars or be imprisoned for not more than five years, or
33 both, in the discretion of the court.

Sec. 10. *Erroneous Collections; Refund.*—Any person
2 who may have been required to pay the tax provided for
3 in this article because of any mistake of law or fact or
4 because the tax herein provided for was improperly col-
5 lected may apply for a refund thereof either to the county
6 clerk receiving such payment, or to the state auditor.

CHAPTER 157

(House Bill No. 284—By Mr. Boiarsky)

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article twenty-three, chapter nineteen of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, relating to taxes to be paid by and the financial responsibility of licensees conducting horse racing within the state, and to the regulation and control of horse racing.

Article 23. Horse Racing.

Section

7. Per diem tax on tracks; tax on pool contribution; how taxes paid; financial responsibility of licensees.
9. Only pari-mutuel system of wagering permitted; commission of licensee on pari-mutuel pools; minors; auditor.

Be it enacted by the Legislature of West Virginia:

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

Section 7. *Per Diem Tax on Tracks; Tax on Pool Contribution; How Taxes Paid; Financial Responsibility of Licensees.*—A person operating any horse race track one mile or more in length shall pay each day upon which horse races are run, a license tax of five hundred dollars; any race track less than one mile in length shall pay for each day upon which horse races are run a license tax of two hundred fifty dollars: *Provided*, That the per diem tax shall not apply to horse shows or county fairs at which racing is conducted for not more than six days. Any person licensed by the commission to conduct racing and to permit and conduct pari-mutuel wagering under this article shall, in addition to the afore-mentioned tax, pay to the racing commission of the state of West Virginia a tax of six per cent of the total contribution to all pari-mutuel pools conducted or made at any and every race meeting licensed under this article: *Provided, however*, That on and after the first day of July, one thousand nine hundred sixty-two, said tax shall be reduced to five per cent of said contributions. Such payments shall be made to the commission or its agent after the last race on each day and every day of each and every race meeting, and

23 shall be made from all contributions to all pari-mutuel
24 pools to each and every race of the day, which payment
25 shall be deposited with the treasurer of the state of West
26 Virginia to the credit of the general revenue fund.

27 Any person making application for a license for a meet-
28 ing to be held on any track in the state of West Virginia,
29 shall, when required, furnish satisfactory evidence to the
30 commission of his or their ability to pay license fees,
31 purses, salaries of officials and other expenses incident to
32 the meeting. In the event the applicant is not able to
33 furnish such satisfactory evidence of his or their ability
34 to pay such expenses and fees, then the commission may
35 require bond or other adequate security for not more than
36 four successive days before such license is issued.

Sec. 9. *Only Pari-Mutuel System of Wagering Permitted; Commission of Licensee on Pari-Mutuel Pools; Minors; Auditor.*—A person licensed by the commission
2 shall permit only the pari-mutuel system of wagering
3 within the enclosure at which horse racing is held, and
4 the commission deducted by the licensee from the said
5 pari-mutuel pools shall not exceed fifteen per cent of the
6 total pari-mutuel pools for the day, including the license
7 fee of the gross amount handled hereinbefore provided for,
8 plus the breakage, which shall be made and calculated to
9 the dime. Such breakage shall be retained by the licensee:
10 *Provided, however,* That on and after the first day of July,
11 one thousand nine hundred sixty-two, the said commission
12 so deducted shall not exceed fourteen per cent.

15 No holder of such license shall permit or allow any per-
16 son under the age of twenty-one years to wager thereat,
17 knowing or having reason to believe that such person is
18 under the age of twenty-one years. Any violation of this
19 paragraph shall be punishable by revocation of license.

20 An auditor of pari-mutuel pools shall be appointed by the
21 commission and shall be compensated by said commission.
22 He shall be an experienced public accountant. Said auditor
23 shall have free access to the space or enclosure where the
24 pari-mutuel pool system of wagering is conducted or calcu-
25 lated at any race meeting to which he shall be assigned for
26 the purpose of ascertaining whether or not said licensee is

27 retaining only the commission provided for in said section.
28 He shall also, for the same purposes only, have full and free
29 access to all records and papers pertaining to such pari-
30 mutuel pool system of wagering, and shall report to the
31 commission in writing, under oath, whether or not the
32 licensee has retained any commissions in excess of those
33 permitted under this article.

CHAPTER 158

(Senate Bill No. 126—By Mr. Davis and Mr. Handlan)

[Passed March 2, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to the investment of trust funds by boards of trustees or fiduciaries of any university, college, seminary or other institution of learning and of any hospital, church or other eleemosynary or charitable institution.

Article 6. Investments by Fiduciaries.

Section

2-b. Circumstances under which certain fiduciaries may commingle or consolidate trust funds.

Be it enacted by the Legislature of West Virginia:

That article six, chapter forty-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 two-b, to read as follows:

Section 2-b. *Circumstances under Which Certain Fiduciaries May Commingle or Consolidate Trust Funds.*—
2 Whenever any board of trustees or any fiduciary or co-
3 fiduciary for any institution or association designated in
4 section two-a of this article holds funds for investment
5

6 for one or more purposes other than the general objectives
7 of such institution or association under the terms of more
8 than one trust, such funds, or any part thereof, may, for
9 purposes of collective investment, by such board of trust-
10 ees or such fiduciary or co-fiduciary, be commingled or
11 consolidated into and treated as one trust fund. If any
12 bank or trust company qualified to act as fiduciary in this
13 state be such a fiduciary or co-fiduciary, the funds of such
14 commingled or consolidated trust fund may be invested
15 in interests in any common trust fund established by such
16 bank or trust company so qualified under the provisions
17 of section six of this article, and, provided such common
18 trust fund be invested in keeping with the standards for
19 investments by fiduciaries provided by section two-a of
20 this article, the investments of such trust fund need not
21 be limited to securities described in subdivisions (a) to
22 (g), inclusive, of section two of this article. If funds of
23 any such commingled or consolidated trust fund be in-
24 vested in interests in any such common trust fund, the
25 commingled or consolidated trust fund shall be treated
26 as a single participant in the common trust fund, but
27 whether investment be in interests in a common trust fund
28 or in other property, each individual trust the funds of
29 which shall have been commingled or consolidated for
30 purposes of investment shall be entitled to such share in
31 the value of any investment of the commingled or consol-
32 idated fund and in the income thereof as the value of its
33 contribution to the commingled or consolidated fund bears
34 to the total value of the funds so commingled or consoli-
35 dated as one trust fund for purposes of collective invest-
36 ment.

CHAPTER 159

(House Bill No. 281—By Mr. Speaker, Mr. Singleton, and
Mr. Seibert)

[Passed March 1, 1961; in effect ninety days from passage. Approved by the
Governor.]

AN ACT to amend article three, chapter forty-one of the code
of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto four new sections, designated sections eight, nine, ten and eleven, relating to devises and bequests made by will to the trustee or trustees of an existing trust or a trust subsequently established by the testator or others by adopting the Uniform Testamentary Additions to Trusts Act.

Article 3. Provisions as to Construction.

Section

8. Testamentary additions to trusts; uniform act.
9. Same; effect on prior wills.
10. Same; uniformity of interpretation.
11. Same; short title.

Be it enacted by the Legislature of West Virginia:

That article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto four new sections, designated sections eight, nine, ten and eleven, to read as follows:

- Section 8. *Testamentary Additions to Trusts; Uniform*
- 2 Act.—A devise or bequest, the validity of which is deter-
 - 3 minable by the law of this state, may be made by a will to
 - 4 the trustee or trustees of a trust established or to be estab-
 - 5 lished by the testator or by the testator and some other
 - 6 person or persons or by some other person or persons (in-
 - 7 cluding a funded or unfunded life insurance trust, al-
 - 8 though the trustor has reserved any or all rights of owner-
 - 9 ship of the insurance contracts) if the trust is identified in
 - 10 the testator's will and its terms are set forth in a written
 - 11 instrument (other than a will) executed before or concur-
 - 12 rently with the execution of the testator's will or in the
 - 13 valid last will of a person who has predeceased the testator
 - 14 (regardless of the existence, size, or character of the
 - 15 corpus of the trust). The devise or bequest shall not be
 - 16 invalid because the trust is amendable or revocable, or
 - 17 both, or because the trust was amended after the execu-
 - 18 tion of the will or after the death of the testator. Unless
 - 19 the testator's will provides otherwise, the property so
 - 20 devised or bequeathed (a) shall not be deemed to be held
 - 21 under a testamentary trust of the testator but shall be-

22 come a part of the trust to which it is given and (b) shall
23 be administered and disposed of in accordance with the
24 provisions of the instrument, or will setting forth the
25 terms of the trust, including any amendments thereto
26 made before the death of the testator (regardless of
27 whether made before or after the execution of the testa-
28 tor's will), and, if the testator's will so provides, including
29 any amendments to the trust made after the death of the
30 testator. A revocation or termination of the trust before
31 the death of the testator shall cause the devise or bequest
32 to lapse.

Sec. 9. *Same; Effect on Prior Wills.*—Sections eight
2 through eleven of this article shall be effective with re-
3 spect to any devise or bequest described in section eight
4 made by the will of a testator dying after the effective
5 date of this act whose will shall have been executed prior
6 to such date.

Sec. 10. *Same; Uniformity of Interpretation.*—Sections
2 eight through eleven of this article shall be so construed
3 as to effectuate its general purpose to make uniform the
4 law of those states which enact it.

Sec. 11. *Same; Short Title.*—Sections eight through
2 eleven of this article may be cited as the "Uniform Testa-
3 mentary Additions to Trusts Act."

CHAPTER 160

(Senate Bill No. 210—By Mr. Carson, Mr. President)

[Passed March 9, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, six-a, eight-c, nine, ten, fifteen and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to workmen's compensation.

Article 4. Disability and Death Benefits.**Section**

3. Disbursements for medicine, hospital treatment, artificial limbs and other appliances; contract by employer with hospital prohibited.
6. Classification of disability benefits.
- 6-a. Stages of silicosis; benefits and mode of payment to employees and dependents.
- 8-c. Silicosis medical board; reports and distribution thereof; findings required of board; objection to findings; procedure thereon.
9. Physical and vocational rehabilitation.
10. Classification of death benefits; "dependents" defined.
15. Application for benefits; report of injuries by employer.
- 15-c. Nonmedical questions determined by commissioner on hearing of claim for occupational diseases other than silicosis.

Be it enacted by the Legislature of West Virginia:

That sections three, six, six-a, eight-c, nine, ten, fifteen and fifteen-c, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 3. *Disbursements for Medicine, Hospital Treatment, Artificial Limbs and Other Appliances; Contract by Employer with Hospital Prohibited.*—Except in case of silicosis, the commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:
- (a) Such sums for medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required, but in no case to exceed the sum of twenty-four hundred dollars: *Provided, however,* That in exceptional cases where the treatment required, in the opinion of competent medical authority, is such as to necessitate an expenditure in excess of such amount, the commissioner may pay out of any available funds, such additional sum as may be necessary, not to exceed an additional sum of eight hundred dollars, but such additional sum shall not be charged to the account of the employer.
 - (b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and

22 such other and additional approved mechanical appliances
23 and devices authorized under subdivision (a) hereof may
24 be made to the injured employee, or to the person or per-
25 sons who have furnished such service, or who have ad-
26 vanced payment for same, as the commissioner may deem
27 proper, but no such payments or disbursements shall be
28 made or awarded by him unless duly verified statements
29 on forms prescribed by the commissioner shall be filed
30 with the commissioner within six months after the cessa-
31 tion of such treatment or the delivery of such appliances:
32 *Provided, however,* That no payment hereunder shall be
33 made unless such verified statement shows no other or
34 additional charge for such treatment, appliance or device
35 has been or will be made against any person, firm or cor-
36 poration. Failure on the part of the doctor or hospital to
37 submit to the commissioner within such six months' pe-
38 riod bills for services rendered to an injured employee
39 shall preclude collection thereof from the injured em-
40 ployee.

41 (c) No employer shall enter into any contracts with
42 any hospital, its physicians, officers, agents or employees,
43 to render medical, dental or hospital service or to give
44 medical or surgical attention therein to any employee for
45 injury compensable within the purview of this chapter,
46 and no employer shall permit or require any employee to
47 contribute, directly or indirectly, to any fund for the pay-
48 ment of such medical, surgical, dental or hospital service
49 within such hospital for such compensable injury. Any
50 employer violating this section shall be liable in damages
51 to his or its employees and shall not avail himself of any
52 of the common law defenses mentioned in section eight,
53 article two of this chapter, and any employer or hospital
54 or agent or employee thereof violating the provisions of
55 this section shall be guilty of a misdemeanor, and, upon
56 conviction thereof, shall be sentenced to pay a fine not
57 exceeding one thousand dollars or undergo imprison-
58 ment not exceeding one year, or both.

Sec. 6. *Classification of Disability Benefits.*—Where
2 compensation is due an employee under the provisions
3 of this chapter for a personal injury other than first-stage

4 silicosis, such compensation shall be as provided in the
5 following schedule:

6 (a) If the injury causes temporary total disability, the
7 employee shall receive during the continuance thereof
8 sixty-six and two-thirds per cent of his average weekly
9 earnings, not to exceed a maximum of thirty-eight dollars
10 a week nor to be less than a minimum of twenty-two dol-
11 lars a week.

12 (b) Subdivision (a) shall be limited as follows: Aggre-
13 gate award for a single injury causing temporary disabili-
14 ty shall be for a period not exceeding two hundred eight
15 weeks.

16 (c) If the injury causes permanent disability, the per-
17 centage of disability to total disability shall be determined
18 and the award computed and allowed as follows:

19 For permanent disability of from one per cent to eighty-
20 four per cent, inclusive, sixty-six and two-thirds per cent
21 of the average weekly earnings for a period to be com-
22 puted on the basis of four weeks' compensation for each
23 per cent of disability determined.

24 For a disability of eighty-five to one hundred per cent,
25 sixty-six and two-thirds per cent of the average weekly
26 earnings during the remainder of life.

27 (d) If the injury results in the total loss by severance
28 of any of the members named in this subdivision, the
29 percentage of disability shall be determined in accordance
30 with the following table, and award made as provided in
31 subdivision (c) of this section:

32 The loss of a great toe shall be considered a ten percent
33 disability.

34 The loss of a great toe (one phalanx) shall be considered
35 a five percent disability.

36 The loss of other toes shall be considered a four percent
37 disability.

38 The loss of other toes (one phalanx) shall be considered
39 a two percent disability.

40 The loss of all toes shall be considered a twenty-five per-
41 cent disability.

42 The loss of fore part of foot shall be considered a thirty
43 percent disability.

44 The loss of foot shall be considered a thirty-five percent
45 disability.

46 The loss of leg shall be considered a forty-five percent
47 disability.

48 The loss of thigh shall be considered a fifty percent
49 disability.

50 The loss of thigh at hip joint shall be considered a sixty
51 percent disability.

52 The loss of little or fourth finger (one phalanx) shall
53 be considered a three percent disability.

54 The loss of little or fourth finger shall be considered a
55 five percent disability.

56 The loss of ring or third finger (one phalanx) shall be
57 considered a three percent disability.

58 The loss of ring or third finger shall be considered a five
59 percent disability.

60 The loss of middle or second finger (one phalanx) shall
61 be considered a three percent disability.

62 The loss of middle or second finger shall be considered a
63 seven percent disability.

64 The loss of index or first finger (one phalanx) shall be
65 considered a six percent disability.

66 The loss of index or first finger shall be considered a
67 ten percent disability.

68 The loss of thumb (one phalanx) shall be considered a
69 twelve percent disability.

70 The loss of thumb shall be considered a twenty percent
71 disability.

72 The loss of thumb and index finger shall be considered
73 a thirty-two percent disability.

74 The loss of index and middle finger shall be considered
75 a twenty percent disability.

76 The loss of middle and ring finger shall be considered a
77 fifteen percent disability.

78 The loss of ring and little finger shall be considered a
79 ten percent disability.

80 The loss of thumb, index and middle finger shall be
81 considered a forty percent disability.

82 The loss of index, middle and ring finger shall be con-
83 sidered a thirty percent disability.

84 The loss of middle, ring and little finger shall be con-
85 sidered a twenty percent disability.

86 The loss of four fingers shall be considered a thirty-two
87 percent disability.

88 The loss of hand shall be considered a fifty percent
89 disability.

90 The loss of forearm shall be considered a fifty-five per-
91 cent disability.

92 The loss of arm shall be considered a sixty percent
93 disability.

94 The total and irrecoverable loss of the sight of one eye
95 shall be considered a thirty-three percent disability, and
96 the injured employee shall be entitled to compensation
97 for a period of one hundred and thirty-two weeks.

98 For the partial loss of vision in one, or both eyes, the
99 percentage of disability shall be determined by the com-
100 missioner, using as a basis the total loss of one eye.

101 The total and irrecoverable loss of the hearing of one ear
102 shall be considered a fifteen percent disability, and the
103 injured employee shall be entitled to compensation for a
104 period of sixty weeks. The total and irrecoverable loss
105 of the hearing of both ears shall be considered a forty-five
106 percent disability, and the injured employee shall be
107 entitled to compensation for a period of one hundred
108 eighty weeks.

109 For the partial loss of hearing in one, or both ears, the
110 percentage of disability shall be determined by the com-
111 missioner, using as a basis the total loss of hearing in both
112 ears.

113 (e) Should a claimant to whom has been made a per-
114 manent partial award of from one per cent to eighty-four
115 per cent, both inclusive, die from sickness or noncom-
116 pensable injury, the unpaid balance of such award shall
117 be paid to claimant's dependents as defined in this chap-

118 ter, if any; such payment to be made in the same install-
119 ments that would have been paid to claimant if living:
120 *Provided, however,* That no payment shall be made to any
121 widow of such claimant after her remarriage, and that
122 this liability shall not accrue to the estate of such claimant
123 and shall not be subject to any debts of, or charges against,
124 such estate.

125 (f) The award for permanent disabilities intermediate
126 to those fixed by the foregoing schedule and permanent
127 disability of from one per cent to eighty-four per cent
128 shall be in the same proportion and shall be computed
129 and allowed by the commissioner.

130 (g) The percentage of all permanent disabilities other
131 than those enumerated in subdivisions (c), (d), (e) and
132 (f) of this section shall be determined by the commis-
133 sioner, and award made in accordance with the provisions
134 of subdivision (c).

135 (h) Compensation payable under any subdivision of
136 this section shall be limited as follows: Not to exceed a
137 maximum of thirty-eight dollars a week nor to be less
138 than a minimum of twenty-two dollars a week.

139 (i) Where an injury results in temporary total dis-
140 ability for which compensation is awarded under sub-
141 division (a) of this section and such injury is later de-
142 termined permanent partial disability under subdivision
143 (c), the amount of compensation so paid shall be con-
144 sidered as payment of the compensation payable for such
145 injury in accordance with the schedule in subdivision (c).
146 Compensation, either total temporary or permanent par-
147 tial, under this section shall be payable only to the injured
148 employee and the right thereto shall not vest in his or her
149 estate, except that any unpaid compensation which would
150 have been paid or payable to the employee up to the time
151 of his death, if he had lived, shall be paid to the depend-
152 ents of such injured employee if there be such dependents
153 at the time of death.

154 (j) The following permanent disabilities shall be con-
155 clusively presumed to be total in character:

156 Loss of both eyes or the sight thereof.

157 Loss of both hands or the use thereof.

158 Loss of both feet or the use thereof.

159 Loss of one hand and one foot or the use thereof.

160 In all other cases permanent disability shall be deter-
161 mined by the commissioner in accordance with the facts
162 in the case, and award made in accordance with the pro-
163 visions of subdivision (c).

Sec. 6-a. *Stages of Silicosis; Benefits and Mode of Pay-*
2 *ment to Employees and Dependents.*—An employee shall,
3 for the purpose hereof, be deemed to have silicosis: (1)
4 In the first stage when it is found by the commissioner
5 that the earliest detectable specific signs of silicosis are
6 present, whether or not capacity for work is or has been
7 impaired by such silicosis; (2) In the advanced stage
8 when it is found by the commissioner that definite and
9 specific physical signs of silicosis are present, and that
10 capacity for work is or has been impaired by that disease.

11 Where compensation for silicosis is due an employee
12 under the provisions hereof, such compensation shall be
13 as provided in the following schedule: (a) If the em-
14 ployee is suffering from silicosis in the first stage, the
15 employee shall receive one thousand dollars as compen-
16 sation in full for silicosis that he has sustained as a re-
17 sult of and in the course of his employment, to be payable
18 as a lump sum or in periodic installments in the discre-
19 tion of the commissioner, which shall be a final payment
20 and operate as a full release by the employee for com-
21 pensation and for any claim against the employer that
22 the employee may thereafter have for silicosis, and irre-
23 spective of whether the employee thereafter continues in
24 the same employment, he shall not have the right to re-
25 ceive any or further compensation or make any claim
26 because of silicosis, either to the compensation commis-
27 sioner or against his employer, anything to the contrary
28 in this chapter notwithstanding. (b) If the employee is
29 suffering from silicosis in the advanced stage, the per-
30 centage of permanent disability shall be determined by
31 the commissioner in accordance with the facts in the case
32 and with the advice and recommendation of the silicosis
33 medical board. Compensation shall be paid therefor in

34 the same manner and at the same rate as is provided for
35 permanent disability under the provisions of subdivisions
36 (c), (e), (f), (g) and (h) of the preceding section:
37 *Provided*, That the determination by the commissioner
38 of the percentage of permanent disability and acceptance
39 of the first payment on such award by the claimant shall
40 cause the determination to become final and the claimant,
41 except for the remainder due him under such original
42 award shall not have the right to receive any or further
43 compensation or make any claim because of silicosis
44 irrespective of whether the employee thereafter continues
45 in the same employment, either to the compensation com-
46 missioner or against the employer, anything to the con-
47 trary in this chapter notwithstanding: *Provided further*,
48 That in no case shall an award for advanced silicosis be
49 less than the compensation herein provided for first-stage
50 silicosis. (c) If the employee dies from silicosis within six
51 years from the date of his last injurious exposure to silicon
52 dioxide dust in harmful quantities, the benefits shall be
53 in the amounts and to the persons provided for in section
54 ten of this article; as to such benefits, sections eleven to
55 fourteen inclusive, of this article shall apply. (d) In cases
56 of permanent disability or death due to silico-tuberculosis
57 (silicosis accompanied by active tuberculosis of the lungs),
58 compensation shall be payable as for disability or death
59 due to silicosis alone.

Sec. 8-c. *Silicosis Medical Board; Reports and Distribu-*
2 *tion Thereof; Findings Required of Board; Objection to*
3 *Findings; Procedure Thereon.*—The silicosis medical
4 board, as soon as practicable, after it has completed its
5 investigation, shall make its written report, to the com-
6 missioner, of its findings and conclusions on every medical
7 question in controversy, and the commissioner shall send
8 one copy thereof to the employee or claimant and one
9 copy to the employer, and the board shall also return to
10 and file with the commissioner all the evidence, as well as
11 all statements under oath, if any, of the persons who ap-
12 peared before it on behalf of the employee or claimant,
13 or employer, and also all medical reports and X-ray ex-
14 aminations produced by or on behalf of the employee or
15 claimant, or employer.

16 The findings and conclusions of the board shall set forth,
17 among other things, the following:

18 (a) Whether or not the claimant or the deceased em-
19 ployee has contracted silicosis, and, if so, the stage thereof,
20 and in all cases where silicosis is found in an advanced
21 stage, the percentage of permanent disability resulting
22 therefrom.

23 (b) If the claimant or the deceased employee has con-
24 tracted such disease, whether or not the exposure in the
25 employment was sufficient to have caused silicosis or to
26 have perceptibly aggravated an existing silicosis.

27 (c) What, if any, physician appeared before the board
28 on behalf of the claimant, and what, if any, X-rays were
29 produced by or on behalf of the claimant, and what, if
30 any, physician appeared before the board on behalf of
31 the employer, and what, if any, X-rays were produced by
32 or on behalf of the employer.

33 If either party objects to the whole or any part of such
34 findings and conclusions of the board, he shall file with
35 the commissioner, within fifteen days of the mailing of
36 such copy to him unless for good cause shown the com-
37 missioner extends such time, his objections thereto in
38 writing, specifying the particular statements of the
39 board's findings and conclusions to which he objects.
40 After the time has expired for the filing of objections to
41 the findings and conclusions of the board, the commis-
42 sioner shall proceed to act as provided in this chapter.
43 If after the time has expired for the filing of objections
44 to the findings and conclusions of the board no objections
45 have been filed, the report of a majority of the board of
46 its findings and conclusions on any medical question shall
47 be taken to be plenary and conclusive evidence of the
48 findings and conclusions therein stated. If objection has
49 been filed to the findings and conclusions of the board,
50 notice thereof shall be given to the board, and the mem-
51 bers thereof joining in such findings and conclusions
52 shall appear at the time fixed by the commissioner for
53 the hearing to submit to examination and cross-examina-
54 tion in respect to such findings and conclusions. At such
55 hearing evidence to support or controvert the findings and
56 conclusions of the board shall be limited to examination

57 and cross-examination of the members of the board, and
58 to the taking of testimony of other qualified physicians
59 and roentgenologists.

Sec. 9. *Physical and Vocational Rehabilitation.*—In
2 cases where an employee has sustained a permanent dis-
3 ability, or has sustained injuries likely to result in per-
4 manent disability, and such fact has been determined by
5 the commissioner, and the employee can be physically and
6 vocationally rehabilitated and returned to remunerative
7 employment by vocational training, by the use of crutches,
8 artificial limbs, or other approved mechanical appliances,
9 or by medicines, medical, surgical, dental or hospital
10 treatment, the commissioner shall forthwith, after due
11 notice to the employer, expend such an amount as may
12 be necessary for the aforesaid purposes, not, however, in
13 any case, to exceed the sum of twelve hundred dollars.
14 No payment, however, shall be made for such purposes
15 as provided by this section unless authorized by the com-
16 missioner prior to the rendering of such treatment.

17 In every case in which the commissioner shall order
18 physical or vocational rehabilitation of a claimant as pro-
19 vided herein, the claimant shall, during the time he is
20 receiving any vocational rehabilitation or rehabilitative
21 treatment that renders him totally disabled during the
22 period thereof, be compensated on a temporary total dis-
23 ability basis for such period, unless he is being paid com-
24 pensation under an award granted prior to the time such
25 rehabilitation is authorized by the commissioner.

Sec. 10. *Classification of Death Benefits; "Dependent"*
2 *Defined.*—In case a personal injury other than silicosis or
3 other occupational disease, suffered by an employee in
4 the course of and resulting from his employment, causes
5 death within the period of six years and disability is con-
6 tinuous from date of such injury until date of death, or if
7 death results from silicosis or from any other occupational
8 disease within six years from the date of the last ex-
9 posure to the hazard of silicon dioxide dust or to the other
10 particular occupational hazard involved, as the case may
11 be, the benefits shall be in the amounts and to the persons
12 as follows:

13 (a) If there be no dependents, the disbursements shall
14 be limited to the expense provided for in sections three
15 and four of this article.

16 (b) If the deceased employee leaves a dependent widow
17 or invalid widower, the payment shall be seventy-five
18 dollars a month until death or remarriage of such widow
19 or widower, and in addition twenty dollars a month for
20 each child under eighteen years of age, to be paid until
21 such child reaches such age, or, if an invalid child, twenty-five
22 dollars a month, to continue as long as such child
23 remains an invalid: *Provided, however,* That if such
24 widow or invalid widower shall remarry within ten years
25 from the date of the death of such employee, such widow
26 or widower shall be paid at the time of remarriage twenty
27 per cent of the amount that would be due for the period
28 remaining between the date of such remarriage and the
29 end of ten years from the date of death of such employee,
30 and such widow or widower shall be advised in writing
31 by the commissioner of his or her rights under this proviso
32 at the time of making the original award: *Provided further,*
33 That if upon investigation and hearing, as provided in article five
34 of this chapter, it shall be ascertained
35 that such widow or widower is living with a man or woman,
36 as the case may be, as man and wife and not married,
37 or that the widow is living a life of prostitution, the commissioner
38 shall stop the payments of the benefits herein
39 provided to such widow or widower.

40 If the deceased employee be a widow or widower and
41 leaves a child or children under the age of eighteen years,
42 the payments shall be twenty-five dollars a month to each
43 child until he or she reaches the age of eighteen years.

44 In all awards of compensation to children, unless otherwise
45 provided herein, the award shall be until they reach
46 the age of eighteen years or until their death prior
47 thereto.

48 (c) If the deceased employee leaves no dependent
49 widow or widower and leaves a wholly dependent father
50 or mother, he or she shall be paid the sum of sixty dollars
51 a month, payments to continue until death, and if there

52 be no widow or widower and both the father and mother
53 are wholly dependent, then a joint award shall be made
54 to the father and mother in the sum of sixty dollars a
55 month until death.

56 Upon the death of either the father or mother in any
57 case in which a joint award has been made to them, the
58 full award of sixty dollars a month shall be paid to the
59 survivor until his or her death.

60 (d) If the deceased employee leaves no dependent
61 widow or widower or wholly dependent father or mother
62 but there are other wholly dependent persons, as defined
63 in subdivision (f) of this section, the payment shall be
64 fifty dollars a month, to continue for six years after the
65 death of the deceased, except as otherwise provided
66 herein.

67 (e) If the deceased employee leaves no dependent
68 widow or widower, child under eighteen years of age, or
69 wholly dependent person, but there are partially depend-
70 ent persons at the time of death, the payment shall be
71 twenty dollars a month, to continue for such portion of
72 the period of six years after the death, as the commissioner
73 may determine, but no such partially dependent person
74 shall receive compensation payments as a result of the
75 death of more than one employee.

76 Compensation under subdivisions (b), (c), (d) and (e)
77 hereof shall, except as may be specifically provided to
78 the contrary therein, cease upon the death of the depend-
79 ent, and the right thereto shall not vest in his or her
80 estate.

81 (f) Dependent, as used in this chapter, shall mean a
82 widow, invalid widower, child under eighteen years of
83 age, invalid child or posthumous child, who, at the time
84 of the injury causing death, is dependent in whole or in
85 part for his or her support upon the earnings of the em-
86 ployee; also the following persons who are and con-
87 tinue to be residents of the United States or its territorial
88 possessions: Stepchild under eighteen years of age, child
89 under eighteen years of age legally adopted prior to the
90 injury causing death, father, mother, grandfather or

91 grandmother, who, at the time of the injury causing
92 death, is dependent in whole or in part for his or her sup-
93 port upon the earnings of the employee; an invalid broth-
94 er or sister wholly dependent for his or her support upon
95 the earnings of the employee at the time of the injury
96 causing death.

Sec. 15. *Application for Benefits; Report of Injuries by*
2 *Employer.*—To entitle any employee or dependent of a
3 deceased employee to compensation under this chapter,
4 other than for silicosis or other occupational disease, the
5 application therefor must be made on the form or forms
6 prescribed by the commissioner and filed in the office of
7 the commissioner within one year from and after the
8 injury or death, as the case may be, and all proofs of
9 dependency in fatal cases must likewise be filed with
10 the commissioner within one year from and after the
11 death. In case the employee is mentally or physically
12 incapable of filing such application, it may be filed by his
13 attorney or by a member of his family. It shall be the
14 duty of every employer to report to the commissioner
15 every injury sustained by any person in his employ.
16 Such report shall be on forms prescribed by the commis-
17 sioner and shall be made within sixty days from the date
18 the employer first receives knowledge of such injury.

19 To entitle any employee to compensation for silicosis
20 under the provisions hereof, the application therefor
21 must be made on the form or forms prescribed by the
22 commissioner and filed in the office of the commissioner
23 within two years from and after the last day of the last
24 continuous period of sixty days or more during which
25 the employee was exposed to the hazard of silicon dioxide
26 dust or to the other particular occupational hazard in-
27 volved, as the case may be, or, in the case of death, the
28 application shall be filed as aforesaid by the dependent
29 of such employee within one year from and after such
30 employee's death.

31 To entitle any employee to compensation for occupa-
32 tional disease other than silicosis under the provisions
33 hereof, the application therefor must be made on the form
34 or forms prescribed by the commissioner and filed in the

35 office of the commissioner within two years from and
36 after the day on which the employee was last exposed to
37 the particular occupational hazard involved, or, in the
38 case of death, the application shall be filed as aforesaid
39 by the dependent of such employee within one year from
40 and after such employee's death.

Sec. 15-c. *Nonmedical Questions Determined by Commissioner on Hearing of Claim for Occupational Diseases Other Than Silicosis.*—On the hearing of a claim for compensation for an occupational disease other than silicosis, the commissioner shall hear, determine and file findings covering, but not limited to, the following nonmedical questions:

8 (a) Whether the employee was in fact, within two
9 years prior to the filing of his claim, in the employ of the
10 employer, and, if so, the duration of such employment
11 and whether or not such employment was subject to the
12 provisions hereof.

13 (b) The occupation or occupations, process or processes,
14 in which the employee was engaged during such
15 employment and the approximate periods of work in each
16 such occupation or process.

17 (c) The employments, previous and subsequent to the
18 employment out of which the claim arose, the duration
19 thereof and the exposure therein to the hazard causing the
20 occupational disease.

21 (d) Whether the last injurious exposure to the hazard
22 causing occupational disease in the employment with the
23 employer occurred within two years prior to the filing of
24 the claim, and if the employee is no longer in the service
25 of the employer, the date upon which such employee
26 ceased so to work; and, if the employee has died, the date
27 and place of such death, and the place of interment of
28 the body.

29 The parties may in writing waive the hearing required
30 by this section, in which case the commissioner shall determine the nonmedical facts listed above, and such other
31 nonmedical facts as may in his opinion be pertinent to a
32 decision on the validity of the claim.
33

34 The commissioner shall give each interested party
35 notice in writing of his findings with respect to all such
36 nonmedical facts, and such findings shall be subject to
37 objection and hearing as provided in section one, article
38 five of this chapter.

CHAPTER 161

(House Bill No. 344—By Mr. Brotherton)

[Passed March 10, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing Bedford Land Company to cause the removal, transfer and reinterment of certain graves in Kanawha county upon certain terms and conditions.

Section

1. Bedford Land Company authorized to remove, transfer and reinter certain graves.

WHEREAS, Bedford Land Company has heretofore filed a petition in the circuit court of Kanawha county, West Virginia, and presented evidence thereupon, praying for permission to remove, transfer and reinter thirty-two graves in an area located on Abbotts Fork Hollow of Fifteen Mile Fork of Cabin Creek in Cabin Creek district, Kanawha county, West Virginia; and

WHEREAS, The said court has made certain findings of fact, included among which are that said grave area has been abandoned for many years, that all known survivors of persons interred in said grave area have consented to the removal, transfer and reinterment thereof; and that the livelihood of approximately five hundred persons in the coal industry will be jeopardized unless such permission is granted; and

WHEREAS, The said court has found and ordered that the equities are in favor of said Bedford Land Company, but has declined to grant the permission sought on the sole ground that the court is unable to find any precedent for the granting of such relief and is of the opinion that the matter is one for legislative consideration; therefore,

Be it enacted by the Legislature of West Virginia:

Section 1. *Bedford Land Company Authorized to Re-*
2 *move, Transfer and Reinter Certain Graves.*—Bedford
3 Land Company is hereby authorized to remove, transfer
4 and reinter thirty-two graves in a certain area located on
5 Abbotts Fork Hollow of Fifteen Mile Fork of Cabin Creek
6 in Cabin Creek district, Kanawha county, West Virginia,
7 upon the following terms and conditions: Said removal,
8 transfer and reinterment to be made carefully and rever-
9 ently, at the expense of Bedford Land Company, by a
10 duly licensed undertaking establishment and funeral di-
11 rector, and the relocated graves located as nearly as pos-
12 sible in the same manner with relation to another as they
13 are now located. The place of reinterment of the aforesaid
14 graves shall be a location approved by the known sur-
15 viving relatives of persons interred in the present grave
16 area and by the circuit court of Kanawha county.

CHAPTER 162

(House Bill No. 370—By Mr. Metz and Mr. Noll)

[Passed March 1, 1961; in effect from passage. Approved by the Governor.]

AN ACT to authorize the county courts of Berkeley county and Jefferson county to expend funds out of the general fund for the construction of improvements and maintenance of Camp Frame, 4-H Club Camp.

Section

1. Berkeley county court and Jefferson county court authorized to expend from general funds for construction of improvements and maintenance of Camp Frame, 4-H Club Camp.

Be it enacted by the Legislature of West Virginia:

Section 1. *Berkeley County Court and Jefferson County*
2 *Court Authorized to Expend from General Funds for*
3 *Construction of Improvements and Maintenance of Camp*

4 *Frame, 4-H' Club Camp.*—The county court of Berkeley
5 county and the county court of Jefferson county are here-
6 by each authorized and empowered to expend funds in
7 an amount not to exceed ten thousand dollars out of the
8 county general fund for the construction of improvements
9 and maintenance of Camp Frame, 4-H Club Camp.

CHAPTER 163

(House Bill No. 93—By Mr. Bias)

[Passed February 13, 1961; in effect January 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section eight, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, relating to the terms of court of the common pleas court of Cabell county.

Section

8. Terms of court of common pleas of Cabell county.

Be it enacted by the Legislature of West Virginia:

That section eight, chapter twenty-eight, acts of the Legislature, regular session, one thousand eight hundred ninety-three, and as last amended and reenacted by chapter ninety, acts of the Legislature, regular session, one thousand nine hundred seventeen, be amended and reenacted to read as follows:

Section 8. *Terms of Court of Common Pleas of Cabell*

2 *County.*—There shall be held three terms of said court
3 each year commencing the second Monday in January,
4 the second Monday in May and the second Monday in Sep-
5 tember. The terms of said court shall be held at the
6 county seat of said county at the courthouse thereof, and
7 the court shall prescribe proper rules for the conduct of
8 the business of said court, giving precedence to the crim-

9 inal business over civil business, jurisdiction for which
10 has been heretofore conferred upon such court.

11 All acts or parts of acts inconsistent or in conflict with
12 this act are hereby repealed.

CHAPTER 164

(House Bill No. 34—By Mr. Ours)

[Passed February 20, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to authorize the county court of Grant county to create a special courthouse building and improvement fund, to transfer surpluses and unexpended balances in general county funds to said special fund, and to expend such fund for repairs, improvements and additions to the present courthouse or for the construction and equipment of a new courthouse.

Section

1. Grant county court authorized to create special courthouse building and improvement fund.

Be it enacted by the Legislature of West Virginia:

Section 1. *Grant County Court Authorized to Create Special Courthouse Building and Improvement Fund.*—
2 The county court of Grant county is hereby authorized
3 and empowered to create a special courthouse build-
4 ing and improvement fund, and, from year to year, to
5 transfer to such special fund any surplus or unexpended
6 funds in its general county funds. Said county court
7 is further authorized and empowered to use and expend
8 the special fund created under authority of this act for
9 the purpose of making repairs and improvements, in-
10 cluding additions, to the present courthouse, or for con-
11 structing and equipping a new courthouse at the county
12 seat of Grant county.
13

CHAPTER 165

(House Bill No. 164—By Mr. Slonaker)

[Passed February 20, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing and empowering the county court of Hampshire county to transfer and expend twenty thousand dollars of the building fund of said county to the current operating fund of the Hampshire county memorial hospital.

Section

1. Hampshire county court authorized to transfer and expend the building fund of said county.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Hampshire County Court Authorized to Transfer and Expend the Building Fund of Said County.*—
- 2 The county court of Hampshire county is authorized and
 - 3 empowered to transfer and expend the sum of twenty
 - 4 thousand dollars of the building fund of said county to
 - 5 the current operating fund of the Hampshire county
 - 6 memorial hospital for the purpose of meeting the current
 - 7 operating expenses of said hospital.
 - 8

CHAPTER 166

(House Bill No. 114—By Mr. Miley)

[Passed February 20, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred forty-six, acts of the Legislature, regular session, one thousand nine hundred forty-nine, authorizing the county court of Hardy county to transfer unexpended sums and surpluses in the general fund of said county and in the special jail fund authorized by chapter one hundred forty-six of said acts

into a special fund to be used and expended by the county court for repairs, improvements, and additions to the courthouse of Hardy county.

Section

1. Hardy county court authorized to create a special courthouse building and improvement fund.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred forty-six, acts of the Legislature, regular session, one thousand nine hundred forty-nine, be amended and reenacted to read as follows:

- Section 1. *Hardy County Court Authorized to Create a Special Courthouse Building and Improvement Fund.*—
- The county court of Hardy county is hereby authorized and empowered to create a special courthouse building and improvement fund, and to transfer to such fund any unexpended sums and surpluses, presently or hereafter existing in the general fund of said county and in the special jail fund authorized by chapter one hundred forty-six, acts of the Legislature, regular session, one thousand nine hundred forty-nine. Said county court is further authorized and empowered to use and expend the the special fund created under authority of this act for the purpose of making repairs and improvements, including additions, to the present courthouse, or for constructing and equipping a new courthouse at the county seat of Hardy county.

CHAPTER 167

(House Bill No. 448—By Mr. White and Mr. Cann)

[Passed March 9, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, as amended, by adding thereto a new section, to be numbered

and designated section twenty-five-a, relating to a court worker for the criminal court of Harrison county, and providing for the appointment, tenure, salary and expenses of such court worker.

Section

25-a. Court worker; appointment, duties, tenure, salary and expenses.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred nine, as amended, be amended by adding thereto a new section, numbered and designated section twenty-five-a, to read as follows:

Section 25-a. *Court Worker; Appointment, Duties, Tenure, Salary and Expenses.*—On and after July first, one thousand nine hundred sixty-one, the criminal court of Harrison county or the judge thereof in vacation, with the approval of the county court of Harrison county, is authorized and empowered to employ a full-time court worker to assist and enable the court to discharge all the official duties required of it under the provisions of this act, and the general laws of the state. The court worker shall perform whatever duties may be assigned to or required of such court worker by the court or the judge in vacation.

The said criminal court shall have the sole power and authority to select, appoint, fix the standards for employment, prescribe qualifications for and supervise the court worker herein provided for, any other provisions of law of this state to the contrary notwithstanding. Said court worker shall serve during the will and pleasure of the appointing court or judge.

The court worker shall receive as compensation for his or her services an annual salary of not more than six thousand eight hundred dollars, to be determined by the judge and approved by the county court. Said salary shall be paid in twelve equal monthly installments.

In addition to the annual salary provided for herein, the court worker shall be reimbursed by the county court

27 by reason of his or her actual and necessary expenses, in-
28 cluding mileage allowances, incurred in line of official
29 duty in the field, the extent of such expenses to be fixed
30 by the judge and approved by the county court. The
31 county court shall provide office space, equipment and
32 supplies for the court worker as the judge may deem nec-
33 essary and adequate.

34 The appointment of the court worker when made by the
35 court or judge shall be entered by the court in the order
36 book of the appointing court, a copy of which order of
37 appointment shall be transmitted to the clerk of the coun-
38 ty court. Thereupon the county court shall make provi-
39 sion for payment and pay the salary and expenses of the
40 court worker as shown by the order of appointment.

41 Expenses and mileage accounts of the court worker shall
42 be itemized and verified and presented to and paid by the
43 county court when approved by the judge.

CHAPTER 168

(House Bill No. 84—By Mr. Brotherton)

[Passed February 28, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter one hundred seventy-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, relating to the probation staff of the intermediate court of Kanawha county.

Section

37. Probation staff; probation officers, chief probation officer, clerical and secretarial assistants.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter one hundred seventy-

nine, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, be amended and reenacted to read as follows:

Section 37. *Probation Staff; Probation Officers, Chief Probation Officer, Clerical and Secretarial Assistants.*—
The court is authorized and empowered to appoint and discharge such additional officers, probation officers, and such medical, clerical and secretarial assistance as shall enable the court to discharge all of the duties required of it under the provisions of this act and the general laws of the state, and such personnel shall be paid by the county court monthly such sums as are annually appropriated by the county court, plus reimbursement by the county court of his or her necessary expenses actually incurred monthly in the performance of official duties, including mileage as fixed by the judge and approved by the county court for his or her automobile driven in the performance of official duties. Thereupon, the county court shall make provisions for payment and pay the salaries of said appointees as shown by the order of appointment in equal monthly installments. Expenses and mileage accounts of the probation officers and chief probation officer shall be itemized and verified and presented to and paid by the county court, if such accounts are approved by the judge. The county court shall provide such office space, equipment and supplies for the probation staff, clerical and secretarial and medical assistance as the judge shall deem necessary and adequate: *Provided*, That the appointing judge shall first obtain the approval of the county court of the expenses to be incurred and the salary to be paid any appointee, which approval shall be discretionary with the county court and shall be required before any appointment made hereunder becomes effective.

CHAPTER 169

(House Bill No. 25—By Mr. Bailey)

[Passed February 20, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT authorizing the county court of Lewis county, West Virginia, to use unexpended funds of said county and any

surpluses in the funds of said county and any funds derived from capital assets of the county for the purposes of repairing, improving and constructing additions to the courthouse of said county and to expend for such purposes the fund so created.

Section

1. Lewis county authorized to create special fund for repair and improvement of courthouse and construction of additions thereto.
2. Retransfer of funds.

Be it enacted by the Legislature of West Virginia:

Section 1. *Lewis County Authorized to Create Special Fund for Repair and Improvement of Courthouse and Construction of Additions Thereto.*—The county court of Lewis county, West Virginia, is hereby authorized and empowered from year to year to use all or so much as the court may designate of any unexpended funds of said county and any surpluses in county funds and any existing surpluses or funds derived from capital assets for the purpose of creating a special fund for the repair and improvement of, and construction of additions to, the county courthouse of said county. The county court is hereby authorized and empowered to expend for such courthouse purposes the fund so created.

Sec. 2. *Retransfer of Funds.*—In cases of emergency the county court of Lewis county, by unanimous vote thereof, shall be empowered to retransfer funds from the special building fund herein created to the general county fund.

CHAPTER 170

(House Bill No. 486—By Mr. Lohr)

[Passed March 8, 1961; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county court of Mercer county to expend money for propagation or stocking of fish in any public stream, lake or pond in Mercer county.

Section

1. County court of Mercer county may expend money to stock fish in public streams, lakes or ponds within county.

Be it enacted by the Legislature of West Virginia:

- Section 1. *County Court of Mercer County May Expend Money to Stock Fish in Public Streams, Lakes or Ponds within County.*—The county court of Mercer county may appropriate and expend money from the general county fund, or from any special fund available for such purpose, to propagate or stock game fish in any public stream, lake or pond within the county as designated by the county court.

CHAPTER 171

(House Bill No. 306—By Mr. Gilmore)

[Passed March 1, 1961; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the county court of Tucker county to use any surplus in any fund in said county for the purpose of creating a special building fund for the construction and equipping of a courthouse and/or for the repairing, renovation or reconstruction of the existing courthouse and to expend for such purposes the funds so created.

Section

1. Tucker county court authorized to create a special courthouse building fund.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Tucker County Court Authorized to Create a Special Courthouse Building Fund.*—The county court of Tucker county is hereby authorized and empowered from year to year to use any surplus in any county fund of said county for the purpose of creating a special building

6 fund and expend therefrom such funds for the purpose of
7 the construction and equipping of a courthouse at the
8 county seat of Tucker county, and/or for the repairing,
9 renovation or reconstruction of the existing courthouse
10 building at said county seat.

CHAPTER 172

(House Bill No. 248—By Mr. England and Mr. West)

[Passed February 10, 1961; in effect from passage. Approved by the Governor.]

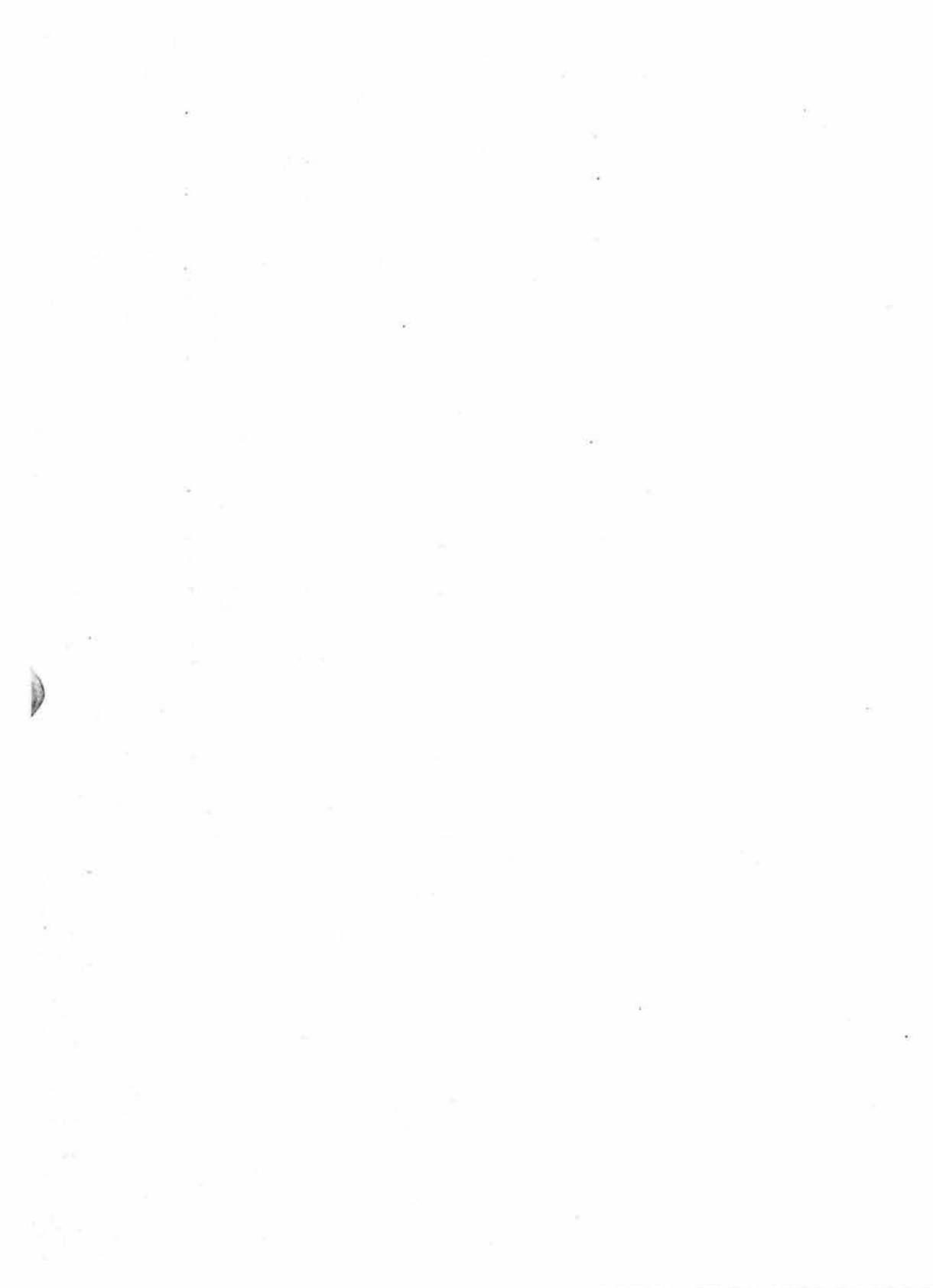
AN ACT to authorize the county court of Wyoming county, West Virginia, and the municipalities of Mullens, Pineville and Oceana, of said county, each to establish and maintain a special fund to be known as the "Airport Fund," and to use and transfer to said "Airport Fund" unexpended funds and surpluses in any fund or funds of said county or municipalities, and to raise and deposit in said fund all money that may be raised from tax levies and appropriations made and provided for that purpose, and within the constitutional limitations, and all money and income derived from the operation of an airport in this county or in other counties in this state, operated jointly with another or other counties or a public agency known as "Wyoming County Airport Authority," and all grants, appropriations, gifts, donations and financial assistance made to said airport by the state of West Virginia, or the United States government, or any person, firm or corporation, and to use said fund for the acquisition, construction, maintenance, improvement, operation, or leasing of an airport in Wyoming county or in other counties in this state operated jointly with another or other counties, or a public agency known as "Wyoming County Airport Authority," and to transfer annually from said fund to the general county fund or any municipal fund, as the case may be, any money in said fund not needed for airport purposes.

Section

1. Authorizing Wyoming county and the municipalities of Mullens, Pineville and Oceana to establish airport fund.

Be it enacted by the Legislature of West Virginia:

Section 1. *Authorizing Wyoming County and the Municipalities of Mullens, Pineville and Oceana to Establish Airport Fund.*—The county court of Wyoming county, West Virginia, and the municipalities of Mullens, Pineville and Oceana, are each authorized to establish and maintain a special fund to be known as the "Airport Fund," and to use and transfer to said "Airport Fund" unexpended funds and surpluses in any fund of said county or municipalities, and to raise and deposit in said fund all money that may be raised from tax levies and appropriations made, provided and authorized for that purpose, and within constitutional limitations, and all money and income derived from the operation of an airport in this county or any other counties in this state operated jointly with another or other counties or a public agency known as "Wyoming County Airport Authority," and all grants, appropriations, gifts, donations and financial assistance made to said airport by the state of West Virginia, or the United States government or any person, firm or corporation, and to use said fund for the acquisition, construction, maintenance, improvement, operation or leasing of an airport in Wyoming county, or in other counties in this state, operated jointly with another or other counties, a public agency known as "Wyoming County Airport Authority," and to transfer annually from said fund to the general county fund or any municipal fund, as the case may be, any money in said fund not needed for airport purposes.



RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the 1961 Regular Session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

HOUSE CONCURRENT RESOLUTION NO. 15

(By Mr. Bailey and Mrs. Withrow)

[Adopted February 8, 1961.]

Requesting the U. S. Bureau of Public Roads to allocate additional mileage to the State of West Virginia under the Federal Highway Act of 1956 and to include U. S. Route 19 in the Interstate System.

WHEREAS, The State of West Virginia is desperately lacking in transportation facilities North and South; and

WHEREAS, U. S. Route 19 offers an ideal route for a North-South highway through this State, providing a fitting link in a highway leading from the Great Lakes to Florida; and

WHEREAS, Such a highway through the State from Morgantown to Beckley would start only 15 miles from the Pennsylvania Turnpike on the North and connect with improved highways to the South, portions of which are now being improved in the States of North Carolina, Georgia and Florida; and

WHEREAS, Such a route would accommodate a huge amount of traffic and transportation from East, West, North and South; and

WHEREAS, Route 19 through West Virginia serves many state institutions, including West Virginia University and its new Medical Center, Fairmont College and Weston State Hospital; and traverses an area rich in scenic and historical values, including the boyhood home of General Stonewall Jackson; and

WHEREAS, West Virginia is one of the most vital states in our National Defense due to its production of metallurgical coals and chemicals; and

WHEREAS, West Virginia is strategically located as a refuge for citizens of a large segment of the United States population in case of attack by foreign enemies, providing adequate transportation is available; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That we, the members of the Legislature of West Virginia, representing the two million citizens of this State, do hereby respectfully request the U. S. Bureau of Public Roads to allocate additional highway mileage for improvement or reconstruction of U. S. Route 19 through the State of West Virginia under the Federal Highway Act of 1956, thereby providing a vital link in a direct route from the Great Lakes to Florida and strengthening the National Defense System of the Nation; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit a copy of this resolution to the President of the United States, the United States Bureau of Public Roads, the members of the Congress from the State of West Virginia, the Governor and the State Road Commissioner of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 17

(By Mr. White)

[Adopted March 7, 1961.]

Requesting the Director of the Conservation Commission to purchase the logging railroad and the rolling stock of said railroad which was used by the Mower Lumber Company in its logging operation at Cass, West Virginia.

WHEREAS, In recent years the government of West Virginia has placed special emphasis on increasing the tourist industry in the State; and

WHEREAS, The promotion of tourism has been extensively conducted through the West Virginia Industrial and Publicity Commission and the West Virginia Conservation Commission; and

WHEREAS, Certain areas of the State are suffering economic distress due to the lack of industry; and

WHEREAS, The Mower Lumber Company which operated a large sawmill at Cass, West Virginia, has recently ceased operation causing a large number of its employees to become unemployed; and

WHEREAS, The company operated a logging railroad which extends from Cass into the wilderness of Cheat Mountain; and

WHEREAS, The railroad transcends a wilderness of sixty-six thousand acres which is reported to be the largest area of wilderness east of the Rocky Mountain range; and

WHEREAS, The scenic beauty of this mountain area is unsurpassed in West Virginia; and

WHEREAS, The mountain railroad used by the Mower Lumber Company is one of the few mountainous railroads left in the Nation; and

WHEREAS, The tourist potential in the area involved is virtually unlimited; and

WHEREAS, The Legislature of West Virginia has previously requested the Director of the Conservation Commission to make a study regarding the possibility of purchasing the railroad and its rolling stock; and

WHEREAS, It has been determined that the railroad and its rolling stock which includes two 1880 model steam shay engines can be purchased if acted upon immediately; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Director of the Conservation Commission of West Virginia is hereby requested to negotiate for the purchase of approximately eleven miles of the railroad extending from the crossing near Leather Bark Run above the town of Cass to the vicinity of Bald Knob, to purchase the rolling stock of said railroad along with the available spare parts, to purchase land for the purpose of constructing thereon a shop and other needed improvements. It being the express intent of the Legislature

that the railroad be developed as a tourist attraction and recreational facility, the Director is requested to do any other thing necessary to the use of said railroad for the purpose of incorporating the same into the state park system in West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 27

(By Mr. McCoy)

[Adopted March 4, 1961.]

Authorizing the purchase of land and the establishment of an educational facility and tourist attraction in connection with the U. S. Navy's giant telescope at the Naval Radio Research Station at Sugar Grove, Pendleton County.

WHEREAS, The United States Navy is now working on a project, staggering to the imagination, at Sugar Grove, Pendleton County—the construction of the world's largest radio telescope—a massive object weighing 20,000 tons and towering 660 feet into the sky, which, when completed, will be the largest fixed, movable structure ever built by man anywhere, and will enable space research experts to listen in on sounds originating 38 billion light-years away; and

WHEREAS, When the installation, which has been nicknamed the "Big Ear" by the Saturday Evening Post, is ready to begin listening to the sounds of outer space it will have cost more than \$100,000,000; and is scheduled to be in operation by the middle of 1963, and by reason of its size and uniqueness of its mission will undoubtedly be a focal point of public interest and attention throughout the world; and

WHEREAS, Among the purposes of this installation are to listen to sounds from space, record and analyze them, to determine if sound patterns can be defined which might be classified as a language of some sort and to identify and analyze the different sounds in space, looking to the approaching era of space travel, as well as to conduct general space research and to complement our systems of military communication; and

WHEREAS, The location and mission of the installation offers an ideal opportunity to organize an educational undertaking

with tremendous impact on the space-consciousness of the American people, especially our younger people; and

WHEREAS, In order to take advantage of this educational opportunity, it is believed that the State of West Virginia should without delay promote the establishing of a suitable structure in the vicinity of the "Big Ear" to contain exhibits, visual aid devices, dioramas and sound reproduction materials, which structure should contain an auditorium and an interior decor which would reproduce the heavens and the relationship of the stellar bodies to one another, and into which could be cabeled the sounds from the giant reflector; and

WHEREAS, Such a development would soon provide a tourist attraction that would dwarf anything within our country, and as the space program and the science of radio-astronomy develops serve as a growing identification between West Virginia and the challenging enterprise of the conquest of space; and

WHEREAS, Congressman John M. Slack, Jr., has advised that the Navy Department could lend appreciable assistance to creation of suitable interior furnishings for such a development; and

WHEREAS, It is the consensus that such a development should be located on state-owned property, controlled in the public interest under the administration of the State Parks Division of the Conservation Commission; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Director of Conservation, or such state officer as may be established hereafter having jurisdiction over State Parks, is hereby requested to explore immediately the possibility of purchasing land in Pendleton County for a site for a development as herein described; and that he is requested and urged upon finding a suitable location for said development to purchase land therefor, from any funds available for establishing parks and recreational facilities, and to expend funds for the construction and equipment of appropriate facilities on such land.

HOUSE CONCURRENT RESOLUTION NO. 30

(Originating in the House Committee on the Judiciary)

[Adopted March 11, 1961.]

Creating an interim committee to study the laws, regulations and administration of the Department of Public Assistance and to make recommendations for the recodification of such laws; changes in regulations, and improvement in administration thereof.

WHEREAS, The Department of Public Assistance of the State of West Virginia was created by enactment of the "Public Welfare Law of 1936"; and

WHEREAS, The express purpose of the Legislature in creating the Department of Public Assistance was to provide an agency to administer assistance to the "... indigent, aged, the indigent blind, dependent children, the indigent relative with whom any dependent child is living, and the indigent permanently and totally disabled . . ."; and

WHEREAS, It was further the intention of the Legislature that public assistance be granted only "... to those actually in need"; and

WHEREAS, Although the said Department has discharged its duties admirably since its creation, the growing work load of the Department in the intervening years, the present economic conditions prevalent in the State, and possible weaknesses in the law have combined to create many discrepancies in the administering of assistance and deviations from the original purpose as set forth by the Legislature; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That an interim committee of six be appointed, three by the Speaker of the House of Delegates and three by the President of the Senate, not more than two appointed by the Speaker and President to be members of the same political party, for the purpose of studying the laws governing the Department of Public Assistance for the recodification of such laws; the regulations and the administrative practices, and to make recommendations therefor; and, be it

Further Resolved, That the members appointed to this committee be compensated at the rate of twenty-five dollars per diem; mileage at the rate of ten cents per mile while attending meetings of said committee; and authorized to employ a secretary. The committee shall file its written report of its findings and recommendations with the Governor of West Virginia and the Clerk of the House and the Clerk of the Senate on or before December 1, 1962, after which said committee shall cease and terminate. The total expenditure of said committee shall not exceed nine thousand dollars.

HOUSE CONCURRENT RESOLUTION NO. 35

(By Mr. Brotherton and Mr. Hubbard)

[Adopted March 11, 1961.]

Directing the Joint Committee on Government and Finance to make a study on liquor control methods, alcoholism, and related matters.

WHEREAS, The Legislature has currently proposed submission of a constitutional amendment which would permit significant changes in our liquor control system and our code of laws covering that system; and

WHEREAS, Some degree of controversy over these proposals is based on a reported lack of generally known body of facts in this field; and

WHEREAS, A keen awareness of the need for such body of facts is evidenced; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance be, and it is, hereby directed to conduct a study on liquor control methods, alcoholism and related matters; and that said committee report the result of its findings, together with its recommendations, to the members of the Legislature, on or before July one, one thousand nine hundred sixty-two; and that said report and recommendations be made public.

HOUSE CONCURRENT RESOLUTION NO. 39

(By Mr. Cann and Mr. Creel)

[Adopted March 7, 1961.]

Requesting and authorizing the Director of the West Virginia Conservation Commission to accept for the State of West Virginia from the Ohio River Company the steamboat Omar or Orco (formerly the John J. Rowe), and to transform it into a museum to be used as a floating exhibit center along the Ohio, Kanawha and Monongahela Rivers.

WHEREAS, In recent years the government of West Virginia has placed special emphasis on increasing the tourist industry in the State; and

WHEREAS, The promotion of tourism has been extensively conducted through the West Virginia Industrial and Publicity Commission and the West Virginia Conservation Commission; and

WHEREAS, Navigation on the Ohio, Kanawha, Monongahela and other rivers has played an important role in the economy of this State; and

WHEREAS, The Ohio River Company has offered to give the State of West Virginia the steamboat Omar or Orco (formerly the John J. Rowe); and

WHEREAS, The Senate will conduct a centennial celebration during the summer of 1963, the purpose of which will be to bring favorable attention to the State of West Virginia, its people, its resources, and its potential for the future, in which year thousands of visitors will come to our State; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Director of the West Virginia Conservation Commission be requested and is hereby authorized to accept for the State of West Virginia from the Ohio River Company the steamboat Omar or Orco (formerly the John J. Rowe), and to transform it into a museum to be used as a floating exhibit center along the Ohio, Kanawha and Monongahela Rivers.

It being the expressed intent of the Legislature that if the steamboat be accepted that it be developed as a centennial attraction, and then incorporated in the state park system of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 43

(By Mr. Rollins)

[Adopted March 9, 1961.]

Concerning the program of academic education at the West Virginia Industrial School for Boys at Pruntytown.

WHEREAS, The educational program at the West Virginia Industrial School for Boys at Pruntytown is currently administered by the superintendent of the school and offers education only through the tenth grade; and

WHEREAS, Many of the boys in the Industrial School are substandard students and in need of remedial instruction which is not now available at such school; and

WHEREAS, If the educational program at such school were incorporated into the school system of Taylor County and placed under the supervision and administration of the Taylor County Board of Education, schooling could be provided for the boys of the Industrial School through the twelfth grade, diplomas could be awarded to boys completing their high school work and remedial instruction of the Taylor County schools could be made available to substandard students; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the State Superintendent of Schools be requested to appoint a committee comprised of three members, being one member each from the office of the State Superintendent of Free Schools, the office of the Commissioner of Institutions and a staff member from the Taylor County school system, to study the practicability and feasibility of placing the educational program at the West Virginia Industrial School for Boys at Pruntytown under the administration and supervision of the Board of Education of Taylor County; and, be it

Further Resolved, That such committee make a report of its findings to the West Virginia Legislature at the session in the year one thousand nine hundred sixty-two.

HOUSE CONCURRENT RESOLUTION NO. 45

(By Mr. Boiarsky)

(Originating in the House Committee on Finance)

[Adopted March 9, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of the feasibility of transfer of facility of Fairmont Emergency Hospital to West Virginia University Medical Hospital.

WHEREAS, It appears that the present Fairmont Emergency Hospital has a very limited capacity with consequent high cost of operation and maintenance; and

WHEREAS, In view of the completion of the Medical Hospital at the West Virginia University at Morgantown, only nineteen miles away; and

WHEREAS, Complete facilities at the Medical Hospital are more desirable; and

WHEREAS, The conversion of the Fairmont Emergency Hospital as a nursing home may be or become a more practical use for this institution; and

WHEREAS, Certain equipment would thus become of little value at Fairmont and could thus be transferred or exchanged; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance be requested and directed to make a study of the feasibility of transferring the activities and functions of the Fairmont Emergency Hospital at Fairmont to the West Virginia University Medical Hospital at Morgantown, and the possible conversion of the improvements at Fairmont Emergency Hospital into

a nurses home or other use for the community and for the State; and, be it

Further Resolved, That the expenses necessarily incurred in making and completing this study be paid from funds provided as joint expenses of the legislative committees.

HOUSE CONCURRENT RESOLUTION NO. 50

(By Mr. Boiarsky)

[Adopted March 10, 1961.]

Requesting the Governor to appoint a committee to make specific recommendations in West Virginia higher educational system.

WHEREAS, The State of West Virginia has one junior college, nine colleges and two universities; and

WHEREAS, Two state boards, namely: the Board of Governors of West Virginia University and the State Board of Education, divide authority in the field of higher education; and

WHEREAS, There appears to be no specific, coordinated plan of functions and objectives among the various colleges and universities; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That we, the members of the Legislature of West Virginia, do respectfully request the Governor of West Virginia to appoint a nine-man committee of his selection, two members to be selected from the State Board of Education and two members from the West Virginia University Board of Governors; and, be it

Further Resolved, That this committee report back to the Legislature in January, one thousand nine hundred sixty-two, with specific recommendation concerning what, if any, changes should be made in West Virginia's higher education complex to assure maximum benefit from the State's higher education resources.

HOUSE JOINT RESOLUTION NO. 2

(By Mr. Speaker, Mr. Singleton, and Mr. Buch)

[Adopted March 11, 1961.]

Proposing an amendment to the Constitution of the State amending article seven thereof, relating to the executive department of state government.

Resolved by the Legislature of West Virginia, two thirds of all 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 shall be submitted to the voters at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article seven of the Constitution of the State of West Virginia be amended so as to read as follows:

Article VII. The Executive.

Section 1. *Governor.*—The chief executive power of the State shall be vested in a Governor, who shall cause the laws to be faithfully executed. He may require the Attorney General to institute and prosecute appropriate actions and proceedings in the courts, brought in the name of the State, to enforce compliance with the laws.

Sec. 2. *Elected Officers.*—In addition to a Governor, there shall be an Attorney General, who shall be the chief legal officer of the State, an Auditor, who shall be the chief fiscal officer of the State, a Commissioner of Agriculture, a Secretary of State and a Treasurer. These officers shall be elected by the qualified voters of the State, and the election shall be held at such times and places as may be prescribed by law. Their terms of office shall be four years and until their successors as designated herein have qualified. Their terms shall commence on the first Monday after the second Wednesday of January next after their election. During their terms of office, they shall reside within the county in which the seat of government is located. Unless otherwise provided by law, they shall keep at the seat of government the public records, books and papers pertaining to their respective offices. They shall

have such powers and perform such duties as may be prescribed by this Constitution or by law.

Sec. 3. *Election Returns; Contests.*—The returns of every election for the officers named in section two of this article shall be sealed and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the House of Delegates, who shall, immediately after the organization of the House, before proceeding to other business, and in the presence of a majority of the members of each House of the Legislature, open and publish the returns. The person having the highest number of votes for each of the offices shall be declared elected; but if two or more shall have the highest and equal number of votes for the same office, one of them shall be chosen for the office by joint vote of a majority of the members of both Houses.

Contested elections for these state elective offices shall be determined in such manner as may be prescribed by law.

Sec. 4. *Eligibility.*—None of the officers named in section two of this article shall hold any other office during the term of his service. A person who has been elected or has served as Governor during all or any part of two consecutive terms shall be ineligible for the office of Governor during any part of the term immediately following the second of the two consecutive terms.

Sec. 5. *Executive and Administrative Organization.*—Except for the offices of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and governing boards of institutions of higher education, all executive and administrative offices, departments, and instrumentalities of the state government, and their respective functions, powers and duties, shall be allocated by the Legislature among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. However, temporary commissions for special purposes may be established by law, and such commissions need not be allocated within a principal department.

Except for the offices of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer, and

the governing boards of institutions of higher education, each principal department shall be under the supervision of the Governor. The head of each such principal department shall be a single executive unless otherwise provided by law.

The Legislature, in compliance with these provisions shall prior to the first day of July, one thousand nine hundred sixty-three, and may from time to time thereafter, allocate by law the executive and administrative offices, departments and instrumentalities of the state government among and within the principal departments. If such allocation shall not have been completed within the time limited, the Governor shall call an extraordinary session of the Legislature to which he shall submit a plan or plans for consideration to complete such allocation; and no other matters shall be considered at such session.

Sec. 6. *Appointment and Removal of Officers.*—The Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint, to serve at the pleasure of the Governor during their terms of office and until the appointment and qualification of their successors, the heads of the principal departments which are under his supervision, whether the head be a single executive or members of a board, commission, or other body prescribed by law.

Without such advice and consent, unless otherwise provided by law, the Governor shall also appoint all other officers whose offices are established by this Constitution or shall be created by law and whose appointment or election is not otherwise provided; and no such officers, except officers of the Legislature, shall be appointed or elected by the Legislature. Except as otherwise provided by general laws, such officers shall serve at the pleasure of the Governor. He shall also have the power to remove any officer, in the manner prescribed by law, for incompetency, neglect of duty, gross immorality, malfeasance in office, or official misconduct. The governor shall fill any vacancies in such offices in the manner prescribed by law. Unless removed, such officers shall continue to serve until their successors are appointed and qualified.

Sec. 7. *Governor's Messages.*—The Governor shall, at the beginning of each session, and at such other time as he may

deem necessary, give to the Legislature information by message as to the condition and affairs of the State, and shall in like manner recommend such measures as he shall deem desirable or expedient.

Sec. 8. *Extraordinary Legislative Session.*—The Governor may convene the Legislature in extraordinary session whenever, in his opinion, the interest of the State requires it; and it shall be his duty to convene the Legislature on application in writing of three fifths of the members elected to each House. When convened at the Governor's instance, the Legislature shall enter upon no business except that stated in the proclamation by which it was convened.

Sec. 9. *Legislature's Meeting Place.*—The Governor may direct that sessions of the Legislature be held at some convenient place other than the seat of government whenever from the presence of an enemy, or from any other cause, it shall become an unsafe place for the meeting of the Legislature.

Sec. 10. *Commander-in-Chief of Armed Forces.*—The Governor shall be commander-in-chief of the armed forces of the State (except when they shall be called into the service of the United States), and may call the same out to enforce the execution of the laws, suppress insurrection, or repeal invasion.

Sec. 11. *Executive Clemency.*—The Governor shall have and may exercise general powers of executive clemency, including the power to commute capital punishment and other sentences, to grant reprieves, to remit fines and penalties in whole or in part, and except where the prosecution has been carried on by the House of Delegates, to grant full or conditional pardons after conviction. The Legislature may by law provide for a board composed of not more than three members, to be appointed by the Governor and to serve during his will and pleasure, to which board he may delegate any or all of his powers of executive clemency, except the power to commute capital punishment. The Governor or the board, as the case may be, shall report to each House of the Legislature at every regular session thereof, and at such other times as required by either House, the particulars of every case in which executive clemency has been granted since the last preceding report. The

report shall be in such form and detail as may be prescribed by law.

Sec. 12. Governor's Approval or Disapproval of Bills Passed by the Legislature.—Except as otherwise provided in this Constitution, every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and may proceed to reconsider the bill. Upon such reconsideration, if a majority of the members elected to that House agree to pass the bill, it shall be sent, together with the objections of the Governor to the other House, by which it may likewise be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law notwithstanding the objections of the Governor: *Provided, That, if upon such reconsideration the bill be amended and reenacted, then it shall be again sent to the Governor and he shall act upon it as if it were before him for the first time. In all such cases, the vote of each House shall be determined by yeas and nays to be entered on the journal.*

Any bill which shall not be returned by the Governor within five days, Sunday excepted, after it shall have been presented to him shall be a law, in the same manner as if he had signed it, unless the Legislature shall, by adjournment prevent its return; in which case it shall be filed with his objections in the office of an officer prescribed by law within fifteen days, Sundays excepted, after such adjournment, or become a law.

Sec. 13. Salaries of Elected Officers.—The Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State and Treasurer shall each receive for his services a salary to be fixed by law, which shall not be increased or diminished during his official term, and for the performance of any official duty he shall not receive to his own use any fees, costs, perquisites of office or compensation, except his salary. He shall account for and pay over in the manner provided by law all moneys collected by him by virtue of his office.

Sec. 14. Vacancy in Governorship; Judicial Determination.—In the event of a vacancy in the office of Governor resulting

from death, resignation or removal of a Governor in office, or the death of a Governor-elect or his failure to qualify, or from any other cause, the functions, powers, duties and emoluments of the office shall devolve, first, upon the President of the Senate; second, upon the Speaker of the House of Delegates; and then upon such officers and in such order of succession as may be provided by law; and in any of these cases, except as otherwise provided herein, the person designated shall serve until a successor shall be elected and qualified as herein provided.

The office of Governor shall be deemed vacant if the Supreme Court of Appeals finds and declares that a Governor in office is unable to discharge the duties of the office by reason of his mental, physical, or other disability: *Provided, however,* That such vacancy shall cease to exist if, prior to the election of a person to fill the vacancy, the court shall find and declare that the inability to discharge the duties of the office by reason of his mental, physical or other disability has ceased to exist.

Upon the filing of a verified petition in writing by one third of the members elected to each House of the Legislature, alleging valid and reasonable grounds for declaring the office of Governor vacant or that the inability which created a vacancy has ceased to exist, the Supreme Court of Appeals shall have original jurisdiction, by quo warranto or other appropriate proceedings, to hear and determine questions concerning a vacancy in the office of Governor. The court may proceed to hearing on such petition and make such findings and determinations as may be warranted. Such proceedings shall have precedence over all other matters before the court, and may be heard in a regular or special term. In the event the court finds that a vacancy does or does not exist, a mandate declaratory thereof shall be issued by the court. The provisions of this section may be implemented by rules of court, but no rule shall impede or unnecessarily delay the expeditious hearing and determination herein contemplated.

Sec. 15. Other Elective Office Vacancies.—In the event of a vacancy in the office of Attorney General, Auditor, Commissioner of Agriculture, Secretary of State or Treasurer resulting from death, resignation, or removal of the person in office, or

the death of the person elected to the office, or from any other cause, the Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint a person to fill the vacancy. The appointee shall, upon qualifying, hold the office, unless he be removed, until his successor shall be appointed, or elected, and qualified.

Sec. 16. *Elections to Fill Vacancies.*—Whenever a vacancy shall occur in the office of Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State or Treasurer, a successor shall be elected to fill the unexpired term at the general election next succeeding the vacancy, unless the vacancy shall occur within sixty days immediately preceding such general election, in which case a successor shall not be elected to fill the unexpired term.

Notwithstanding the provisions of section three of this article, the returns of an election for any such officer for an unexpired term shall be directed to an officer prescribed by law who shall open and publish the returns, and declare the results in such manner as may be provided by law: *Provided, however,* That if two or more candidates have the highest and equal number of votes for the same office, one of them shall be chosen and declared elected to the office by joint vote of a majority of the members of both Houses of the Legislature in the regular or extraordinary session next succeeding the election.

Sec. 17. *Vacancies Filled in Recess of Legislature.*—In the event of a vacancy, during a recess of the Senate, in any office the appointment to which requires confirmation by the Senate, the Governor shall appoint a person to such office, who, upon qualifying, shall hold the office, unless he be removed, for the time herein provided.

The nomination of the person thus appointed during a recess shall be deemed made to the Senate by the Governor at the time of the appointment, unless the nomination be withdrawn by the Governor prior to confirmation by the Senate. A person so nominated, when confirmed by the Senate (a majority of all the Senators elected concurring by yeas and nays), shall hold the office during the remainder of the term, unless he be removed, and until his successor shall be appointed, or elected,

and qualified. If such an interim appointment is not confirmed, it shall expire upon the adjournment of the regular or extraordinary session of the Legislature next after the appointment or when the appointee has been rejected by the Senate, whichever shall first occur.

If a vacancy in any such office shall exist during a regular or extraordinary session of the Legislature, the Governor shall, if practicable, forward to the Senate before its adjournment the name of the person nominated to fill such vacancy.

No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall a person, whose nomination for an office failed to be confirmed, be eligible, prior to the next regular session of the Legislature, for an interim appointment to the same office.

Sec. 18. *Budget and Supplementary Appropriation Bills.*—The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

Sub-Section A—Appropriation Bills

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

Sub-Section B—Budget Bills

(2) Within ten days after the convening of the regular session of the Legislature in odd-numbered years, unless such time shall be extended by the Legislature, and on the second Wednesday of January in even-numbered years, the Governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of the fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves and surplus or

deficit of the State; (c) the debts and funds of the State; (d) an estimate of the State's financial condition as of the beginning and end of the fiscal year covered by the budget; (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the State's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law, (a) for the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the Governor by the Auditor; (d) for payment and discharge of the principal and interest of any debt of the State created in conformity with the Constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the State under the Constitution and laws of the State; (f) for such other purposes as are set forth in the Constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each House the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each House shall promptly cause the bill to be introduced therein, and such bill shall be known as the "Budget Bill". The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he may deliver such an amendment or supplement to the presiding officers of both Houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or diminishing the items therein: *Provided, however,* That the Legislature shall not increase the estimate of revenues submitted in

the budget without the approval of the Governor: *Provided further*, That, except as otherwise provided in this Constitution, the salary or compensation of any public officer shall not be increased or diminished during his term of office; and the bill when and as passed by both Houses shall be law immediately without further action by the Governor.

(6) The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either House of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

Sub-Section C—Supplementary Appropriation Bills

(7) Neither House shall consider other appropriations for the next ensuing fiscal year until the budget bill for such year has been finally acted upon by both Houses, and no such other appropriations whether supplementing the budget for a current fiscal year or the next ensuing fiscal year, shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in the bill unless it appears from such budget that there is sufficient revenue available; (c) no supplementary appropriation bill shall become a law unless it be passed in each House by a vote of a majority of the members present, and the yeas and nays recorded on its final passage. Each supplementary appropriation bill shall be presented to the Governor of the State as provided in section twelve of this article and thereafter all the provisions of that section shall apply.

Sub-Section D—General Provisions

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor shall issue a proclamation extending

the session for such further period as may, in his judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during the extended session except a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power, and it shall be his duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the legislative department, certified by the presiding officer of each House, and for the judiciary, as provided by law, certified by the Auditor, shall be transmitted to the Governor in such form and at such times as he shall direct, and shall be included in the budget.

(10) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments.

(11) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(12) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the Constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the Governor from calling extraordinary sessions of the Legislature, as provided by section eight of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(13) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

HOUSE JOINT RESOLUTION NO. 4

(By Mr. Watson and Mr. Hubbard)

[Adopted March 9, 1961.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section forty-six, article six thereof, relating to the manufacture and sale of liquor.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section forty-six, article six of the Constitution be amended to read as follows:

Section 46. The Legislature shall by appropriate legislation regulate the manufacture and sale of intoxicating liquors within the limits of this State.

Any law legalizing the sale of intoxicating liquors other than by the State as now provided by law, shall provide:

(a) That intoxicating liquors shall be sold, dispensed and/or served only in licensed, bona fide and legitimate restaurants, hotels, clubs, and also in similar facilities owned, controlled, leased or operated by or on behalf of this State, or any municipality of this State, railroad dining cars, aeroplanes and other conveyances moving in interstate commerce.

(b) That intoxicating liquors shall not be sold, dispensed and/or served between the hours of midnight on Saturday and noon on the following Monday, at any time between the hours of midnight and noon on the following day, nor in a saloon or bar room nor to any person unless such person is seated.

(c) That no advertisement, sign, placard or other device designating or advertising the situs of a licensee describing it as a place wherein intoxicating liquors are sold, dispensed and/or served shall be exhibited thereon, in any newspaper or magazine or in any other manner or place whatsoever.

(d) That only one license for each one thousand persons, in a county, in this State, shall be issued, except, that in counties having less than ten thousand persons, three additional licenses shall be permitted; in counties where facilities described in subsection (a) controlled, owned, leased or operated by or on behalf of this State, or any municipality of this State, are located, additional licenses, equal to the number of such facilities shall be permitted and except, also, in those counties wherein race tracks are located, an additional number of licenses equal to the number of such race tracks shall be permitted.

(e) That no more than one license shall be issued to a person.

(f) For special local option elections by a county, or an incorporated municipality to determine whether such sale other than by the State as now provided by law shall be permitted within such county or municipality. An incorporated municipality through such a local option election shall have the sole power to forbid or permit such sale within its corporate boundaries regardless of any determination through a county-wide local option election conducted in the county in which such municipality is located.

(g) At least fifty per cent of all revenues from excise and license taxes on the sale of intoxicating liquors other than by the State as now provided by law shall be annually appropriated to the support of schools.

COMMITTEE SUBSTITUTE FOR
HOUSE JOINT RESOLUTION NO. 7

(Originating in the Committee on the Judiciary)

[Adopted March 11, 1961.]

Proposing an amendment to the Constitution of the State of West Virginia, by adding a new section to article ten thereof, to be designated section eleven, relating to the authority of the Legislature to refer to and prospectively adopt provisions of the laws of the United States in imposing a tax or taxes on or in respect to or measured by

income and limiting the authority of the Legislature to tax incomes.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article ten of the Constitution be amended by adding thereto a new section, to be designated section eleven, to read as follows:

Section 11. Notwithstanding any other provisions of the Constitution to the contrary, the Legislature in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured, by reference to any provisions of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe exceptions or modifications to any such provisions. The Legislature shall in no case impose a tax on the income of any individual, estate, or trust which shall exceed two per centum of the taxable income not in excess of two thousand dollars; plus three per centum of the taxable income in excess of two thousand dollars, but not in excess of eight thousand dollars; plus four per centum of the taxable income in excess of eight thousand dollars, but not in excess of sixteen thousand dollars; plus five per centum of the taxable income in excess of sixteen thousand dollars, but not in excess of twenty-two thousand dollars; plus five and one-half per centum of the taxable income in excess of twenty-two thousand dollars. Nothing contained in this section shall affect the power of this State after the effective date of this amendment in collecting any tax on incomes for any period ending on or prior to the effective date hereof laid in accordance with the terms of any law then in effect.

COMMITTEE SUBSTITUTE FOR
SENATE CONCURRENT RESOLUTION NO. 3

(By Mr. Moore and Mr. Tompos)

[Adopted March 10, 1961.]

Requesting the Joint Committee on Government and Finance of the Legislature to make a study and survey of the present regulatory statutes, rules and regulations pertaining to public utilities in West Virginia.

WHEREAS, There has been evident concern over the ever-increasing cost of public utilities to the people and industry of our State and the resultant hardship inflicted upon them by the virtue of such increased costs; and

WHEREAS, Serious questions have been raised as to the adequacy of our present laws pertaining to the conduct of the Public Service Commission and of prevailing methods of rate determination; and

WHEREAS, Other states are confronted with similar problems relating to the regulation of public utilities; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be hereby requested and directed to make or cause to be made a thorough study of comparative public utility rates and the rate making methods and structure including applicable laws, rules and regulations of this and other states, particularly those states adjoining West Virginia; and, be it

Resolved Further, That the conclusions and recommendations resulting from this study, and appropriate bills embodying such recommendations, be presented to the regular session of the Legislature, 1963; and, be it

Resolved Further, That the expenses necessary to conduct this study to make the necessary report, and to draft the desired bills be paid from legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Hedrick)

[Adopted January 24, 1961.]

Providing for a portrait of former Governor Matthew M. Neely, and for its hanging in an appropriate place in the Capitol Building.

WHEREAS, Attention has been directed to the portraits of the former governors of our State which adorn the walls of various reception rooms and corridors of the Capitol Building; and

WHEREAS, An examination reveals that portraits are hung of most of the former governors of the State of West Virginia except that of former Governor Matthew M. Neely; and

WHEREAS, The Senate is of the opinion that such omission of the portrait of one of our former governors is not intentional; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the present governor be requested to cause to be prepared a portrait of former Governor Matthew M. Neely, with suitable framing, to be hung along with other portraits aforesaid in the Capitol Building, and that the cost thereof be paid from the Governor's Contingent Fund.

SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. McKown)

[Adopted February 3, 1961.]

To make "The West Virginia Hills" the official state song of the State of West Virginia.

WHEREAS, The song entitled "The West Virginia Hills", music composed by H. E. Engle and words written by Mrs. Ellen King, exemplifies the majestic beauty of the "Mountain State"; and

WHEREAS, "The West Virginia Hills" is that song best known and most widely used by the citizens of this State; and

WHEREAS, The West Virginia Music Educators Association meeting in Morgantown on February 19, 1960, voted unanimously to go on record favoring and supporting the preparation and passage of a concurrent resolution by the West Virginia Legislature to make the song "The West Virginia Hills" the official song of the State of West Virginia; and

WHEREAS, Dr. Calvin Buell Agey has carefully edited the song "The West Virginia Hills" in keeping with a further recommendation of the West Virginia Music Educators Association and sound harmonic and melodic practice; and

WHEREAS, This action on the part of the West Virginia Music Educators Association has received the commendation and support of the executive branch of the state government of the State of West Virginia; and

WHEREAS, "The West Virginia Hills" catches the spirit not only of the beauty and grandeur of the State of West Virginia, but also the spirit of the people of this State, in contemplating "summits bathed in glory and pointed skyward to the Great Almighty's Land. Is it any wonder then that my heart with rapture thrills, as I stand once more with loved ones on those West Virginia Hills"; and

WHEREAS, It is desirable to have an official state song at all times, but especially at this time, inasmuch as the eyes of the entire country will be focused upon this State during the centennial celebration; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the composition consisting of the words and music known as "The West Virginia Hills", words by Mrs. Ellen King, music by H. E. Engle, and edited by Dr. Calvin Buell Agey, a copy of which is attached to and made a part of this resolution, is designated as the official state song of the State of West Virginia.

THE WEST VIRGINIA HILLS

Ellen King
(Text slightly altered. CMA)

H. E. Rygle
Edited by: C. Buell Agey
8/19/60

1. Oh, the West Vir-gin-ia hills! How mes-tic and how grand, With their sum-its bathed in glo-ry, 'Tide our fu-ture tried to cast; Ma-ry are our vis-ions bright, Which the heart with rep-ture fills, As I re-ture ne'er ful-fills! But how Prince in-man-u-els Land! Is it a-my won-der then, That my vis-ions bright, Which the heart with rep-ture fills, As I re-ture ne'er ful-fills! But how stand once more with loved ones On those West Vir-gin-ia hills? Oh, the hills, beau-ti-ful hills! see my very day-dreams On those West Vir-gin-ia hills! Oh, the hills, beau-ti-ful hills! love those West Vir-gin-ia hills! beau-ti-ful hills! If o'er see o'er land I roam, Still I'll think of hap-py hours, And my friends among the West Vir-gin-ia hills.

3. Oh, the West Virginia hills!
How unobscured they seem to stand,
With their summits pointed skyward
To the Great Almighty's Land!
Many changes I can see,
Which my heart with sadness fills;
But no changes can be noticed
In those West Virginia hills.
(Chorus)

4. Oh, the West Virginia hills!
I must bid you now adieu.
In my home beyond the mountains
I shall ever dream of you!
In the evening time of life,
If my Father only wills,
I shall still behold the vision
Of those West Virginia hills.
(Chorus)

(Editing copyright by C. Buell Agey, 1960)

SENATE CONCURRENT RESOLUTION NO. 14

(By Mr. Bowers and Mr. Kaufman)

[Adopted March 10, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of the salaries of all elected and appointed state officials and to submit recommendations thereon.

WHEREAS, The salaries of numerous officials of the State, both elected and appointed, were set many years ago; and

WHEREAS, Such salaries have not been changed in some instances, and in other instances have not been changed for some years, during a period of declining currency purchasing power; and

WHEREAS, New departments and commissions have been established, and the duties and responsibilities of certain other positions have grown markedly and become increasingly complicated while those of some have diminished, all without appropriate salary adjustments; and

WHEREAS, There is little correlation between salaries paid in the various departments; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be hereby requested and directed to make a thorough study of the salaries of all elected and appointed state officials to ascertain what adjustments in such salaries should be made; and, be it

Resolved Further, That the conclusions and recommendations which may result from this study and appropriate bills embodying such recommendations be submitted to the next session of the Legislature; and, be it

Resolved Further, That the expenses necessary to conduct this study and to make the necessary report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 17

(By Mr. Jackson)

[Adopted February 28, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of the sums expended annually by the State for insurance premiums and to submit a report of its findings, together with its recommendations as to

whether it would be to the best interest of the State to become a self-insurer.

WHEREAS, It is apparent that the State is spending thousands of dollars each year in insurance premiums; and

WHEREAS, There has been no recent study of amounts expended by the State for insurance premiums and no readily available information which would disclose such amounts; and

WHEREAS, The Legislative Auditor in a report, dated August 9, 1954, to the Joint Committee on Government and Finance suggested that an approach be made toward self-insurance with relation to fire protection; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be hereby requested and directed to make a thorough study of the sums expended annually by the State in all its departments and agencies for insurance premiums to ascertain whether it would be to the best interest of the State for it to become a self-insurer; and, be it

Resolved Further, That its findings, conclusions, and recommendations which may result from this study be made to the regular session of the Legislature, one thousand nine hundred sixty-two; and, be it

Resolved Further, That the expenses necessary to conduct this study and to make the requested report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 18

(By Mr. Jackson)

[Adopted February 28, 1961.]

Requesting and directing the Joint Committee on Government and Finance to make a study of all special revenue fund accounts of the State and to submit a report and its recommendations thereon.

WHEREAS, Over the years numerous special revenue fund accounts have been established; and

WHEREAS, There appears to be considerable idle capital in these special revenue fund accounts; and

WHEREAS, Both the legislative and the executive branches of the government have lost a measure of control over such accounts, in that only a blanket appropriation has been made of such funds, in most instances, and balances have been allowed to accumulate in sizable sums; and

WHEREAS, To accumulate balances in this manner without specific authority is not in keeping with the principles of budgeting in our government which aims at a balance of expenditures with receipts for each appropriation period and does not contemplate accumulation; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be hereby requested and directed to make a thorough study of all special revenue fund accounts and report all such accounts in existence during the current fiscal year; the balance in each of such accounts as of the end of the preceding fiscal year; the receipts and disbursements respecting each of such accounts during the current fiscal year; the balances therein as of the end of the current fiscal year; a detailed statement respecting the sources of such funds and the purposes for which sums were expended therefrom during the current fiscal year, together with its recommendations as to whether such accounts, or any of them, should be altered, eliminated, or transferred to general revenue; and, be it

Resolved Further, That the conclusions and recommendations which may result from this study be made to the regular session of the Legislature, one thousand nine hundred sixty-two; and, be it

Resolved Further, That the expenses necessary to conduct this study and to make the necessary report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 23

(By Mr. Carson, Mr. President, and Mr. McCourt)

[Adopted March 7, 1961.]

Requesting and directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to conduct such studies as may be necessary to enable them to make a comprehensive report on all matters relating to the replacement of our state's business and occupation tax and transportation privilege tax with a corporate net income tax, and to make recommendations on this and related phases of our tax structure.

WHEREAS, The West Virginia "business and occupation tax" and "transportation privilege tax", more commonly referred to as "gross sales tax", is the largest single source of state revenue, producing around fifty million dollars per year; and

WHEREAS, The gross sales tax is levied on total income based upon total sales, receipts, or production, with no deduction allowed for expenses, depreciation, etc.; and

WHEREAS, A corporate net income tax is based upon the net receipts after deduction for all expenses; and

WHEREAS, The West Virginia State Tax Study Commission in its appraisal of West Virginia's gross sales tax found that the tax varies widely among industries when converted to an average net profit rate and as between the same type of industries even though the gross rate is the same; and

WHEREAS, Dr. Vance Q. Alvis, associate professor of economics, College of Commerce, West Virginia University, in his report "Impact of West Virginia Gross Receipts Tax", observes that the impact of the gross receipts tax tends to be heavier upon smaller than upon larger firms; and that it is likely that the tax imposes a greater burden upon new firms, than would some other types of taxes; and

WHEREAS, Thirty-three states have corporate net income taxes in effect with rates ranging from one per cent to eight and eight-tenths per cent; and

WHEREAS, The West Virginia State Tax Study Commission in its report of November, 1960, recommended that a continued study of the tax structure be made in order to properly evaluate the changes recommended in its report and in order to make any further necessary adjustments in the tax structure in light of developments and changes in the state's economic condition; and

WHEREAS, The Legislature at this session has passed and the Governor has signed into law the "West Virginia Personal Income Tax Act" which imposes a tax upon the incomes of individuals, estates and trusts measured by a per centum of the federal income tax; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be and they are hereby authorized and directed to conduct such studies as may be necessary to enable them to make a comprehensive report on all matters related to the replacement of our state's business and occupation tax and transportation privilege tax with a corporate net income tax, and to make recommendations on this and related phases of our tax structure; and, be it

Resolved Further, That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation shall make a full and complete report of its studies and findings, together with its recommendations for legislative or other action, to the Legislature on or before January one, one thousand nine hundred sixty-two; and, be it

Resolved Further, That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be authorized to employ such assistants as they may deem necessary and advisable, and to fix reasonable compensation and expenses of such persons as may seem reasonable; and, be it

Resolved Further, That the expenses necessary to conduct the study and to make the necessary report and recommendations be paid from legislative appropriations made to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation.

SENATE CONCURRENT RESOLUTION NO. 25

(By Mr. Carrigan and Mr. McKown)

[Adopted March 8, 1961.]

Requesting and directing the Joint Committee on Government and Finance to study a system for the distribution of state aid to public schools, and associated problems.

WHEREAS, The present system for the distribution of state aid to public schools has been in existence and use for a number of years; and

WHEREAS, Since the adoption of the present distribution system for said state aid, various other laws, including the property revaluation program, penalty provisions for failure to meet local share and other similar laws, have been enacted which have radically affected the basic concept of the original distribution system; and

WHEREAS, By reason of the various enactments subsequent to the passage of the present state aid distribution system, which have affected the basic concept of said system, it has become impractical and impossible to determine whether the present system adequately meets the basic foundation needs of the public school system of this State, and the system has been under criticism from various interested groups of citizens; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance of this Legislature is requested and directed to conduct a study dealing with all phases of the school foundation program for public education, both on the state and local level, and determine whether or not the present system can be properly revised to meet changing social and economic conditions of this State; what changes are required in the property appraisal program and other programs which may affect the basic foundation program for public schools and other matters relating thereto; and said joint committee shall report to the Legislature not later than the end of the second week of the regular session of said Legislature convening in January, one thousand nine hundred sixty-three, together with such recommendations and reports of their findings.

SENATE CONCURRENT RESOLUTION NO. 27

(By Mr. Riley)

[Adopted March 11, 1961.]

Directing the Joint Committee on Government and Finance to conduct a study of the system of the care, custody, control, supervision and maintenance of persons confined in the state penal and correctional institutions and the system of the control, correction and recommitment of delinquents released therefrom on parole, and the establishment of a Department of Corrections.

WHEREAS, An adequate system of care, custody, control, maintenance and supervision of persons incarcerated in the state penal and correctional institutions as well as the control, supervision, correction and recommitment of such persons on parole is essential to the well-being of the State; and

WHEREAS, Cognizant of the importance of a good system of care, custody, control, supervision, and maintenance of persons incarcerated in the state penal and correctional institutions as well as the control, correction and recommitment of such persons on parole being essential to the well-being of society and many citizens feeling that the existing system is inadequate and could be vastly and vitally improved by the creation of a Department of Corrections to better effectuate such purposes; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance is hereby directed to make a thorough study and investigation of the system of the care, custody, control, supervision and maintenance of persons incarcerated in the state penal and correctional institutions as well as the system of control, supervision, correction and recommitment of such persons on parole, and make findings and recommendations to the Legislature, especially with reference to the establishment of a Department of Corrections to better the system of incarceration and correction of delinquents as aforesaid.

The committee shall make such report to members of the Legislature from time to time as it shall deem advisable, and

shall, on or before the date of the convening of the Legislature at its regular session in January, 1962, make an interim report to members of the Legislature embracing its findings and recommendations to that time. On or before the date of the convening of the regular session of the Legislature in the year one thousand nine hundred sixty-three, the committee shall make a final report to the Legislature, and shall include in such report such findings and recommendations as it shall deem pertinent and shall include in such report drafts of any proposed legislation which it shall deem necessary to carry the recommendations of the committee into effect.

In order to make possible the procurement of the necessary information to carry out the intent and spirit of this resolution, the committee is hereby empowered to call upon any department or agency of state government for such services, information and assistance as it may deem appropriate, to summon witnesses and take testimony and to cause the production of such papers, documents, records, and the like as the committee may deem expedient.

SENATE JOINT RESOLUTION NO. 1

(By Mr. Carson, Mr. President)

[Adopted February 9, 1961.]

To ratify the proposed amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the following proposed amendment to the constitution of the United States be ratified:

ARTICLE _____

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Con-

gress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1960

FIRST EXTRAORDINARY SESSION

(October 3, 1960)

CHAPTER 1

(Senate Bill No. 6—By Mr. Bean, Mr. President, and Mr. Carrigan)

[Passed October 5, 1960; in effect from passage. Approved by the Governor.]

AN ACT to make supplementary appropriations of public moneys out of the state treasury for the department of public assistance to implement this state's participation in the new federal program of medical assistance to the aged.

Section

1. Supplemental appropriation.
-

Be it enacted by the Legislature of West Virginia:

Section 1. *Supplemental Appropriation.*—That in addition to the appropriation made by chapter two, acts of the Legislature, regular session, one thousand nine hundred sixty, there is hereby appropriated from the state fund general revenue, conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, the following supplemental sums of money for the following purposes:

10	53— <i>Department of Public Assistance</i>	
11	Acct. No. 405	
12	Personal Services.....	\$ 137,596
13	Current Expenses.....	26,858
14	Equipment	10,290
15	Medical Services.....	1,207,256
16	Total	\$ 1,382,000

17 This supplemental appropriation shall be paid out of
 18 surplus funds in the state fund general revenue, as evi-
 19 denced by a revised revenue statement submitted to the
 20 Legislature by the board of public works under date of
 21 October four, one thousand nine hundred sixty, in ac-
 22 cordance with the provisions of article six, section fifty-
 23 one of the state constitution.

24 It is the purpose of this appropriation to provide medi-
 25 cal assistance to the aged in accordance with the provi-
 26 sions of an act of Congress entitled "Social Security
 27 Amendments of 1960" (H.R. 12580) and acts of the West
 28 Virginia Legislature, extraordinary session, one thousand
 29 nine hundred sixty. This appropriation is intended to
 30 cover the six-month period ending March thirty-one, one
 31 thousand nine hundred sixty-one, and shall be available
 32 for expenditure from date of passage of this act.

c

CHAPTER 2

(Senate Bill No. 1—By Mr. Carrigan)

[Passed October 5, 1960; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, sixteen and thirty, article five; sections one, two and three, article five-a; and section sixteen, article eleven, all of chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to medical assistance to needy persons presently receiving public assistance, establishing a program of medical assistance for per-

sons above the age of sixty-five years, exempting certain income of needy blind persons receiving public assistance to the blind from the basic determination of need, and exempting the names of recipients of medical assistance for the aged from public disclosure.

Article

5. Public Assistance.

5-a. The State of West Virginia Public Assistance Medical Service Fund.

11. General Provisions.

Be it enacted by the Legislature of West Virginia:

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

Article 5. Public Assistance.

Section

2. Definitions.

4. Blind persons.

16. Hearing by board of review.

30. Grants conditional.

Section 2. *Definitions.*—Unless the context clearly requires a different meaning, when used in this chapter:
“Public assistance” shall mean money payments to, or in behalf of, aged persons, blind persons, dependent children, the relative with whom any dependent child is living, or permanently and totally disabled persons. Public assistance may also include medical care or other type of remedial care recognized by law: *Provided, however,* That public assistance shall not include medical assistance for the aged.

“Resources” shall mean all property, real and personal, tangible and intangible, and all income, whether in the form of money or otherwise.

“Applicant” shall mean the person for whose use and benefit application is made.

16 "Recipient" shall mean the person for whose use and
17 benefit a grant of public assistance is made.

18 "Medical assistance for the aged" shall mean medical
19 assistance to any aged person sixty-five years of age and
20 over, who is not a patient in any institution as a result of
21 a diagnosis of tuberculosis or mental disease, who is not
22 an inmate of a public institution except as a patient in a
23 medical institution, with net income and liquid assets of
24 not more than the amount set from time to time by rules
25 and regulations of the director, based upon services avail-
26 able and the number of persons who can be served within
27 the limits of available funds; but in no event shall the net
28 annual income of any such recipient be more than one
29 thousand five hundred dollars.

Sec. 4. *Blind Persons.*—A blind person shall be eligible
2 for public assistance who:

3 (1) Has no vision, or has vision which is so defective
4 as to prevent the performance of ordinary activities for
5 which eyesight is essential.

6 (2) Has been examined by an ophthalmologist or by a
7 physician skilled in the diseases of the eye or by an
8 optometrist approved or designated by the state depart-
9 ment, and the findings of the examination have been
10 certified by such examiner in the manner and form re-
11 quired by the state department.

12 (3) Has resided in the state for one year immediately
13 preceding the application for public assistance.

14 (4) Is not an inmate of a public institution (except as
15 a patient in a medical institution).

16 (5) Is not a patient in an institution for tuberculosis or
17 mental diseases, nor has been diagnosed as having tuber-
18 culosis or psychosis and is a patient in a medical institu-
19 tion as a result thereof.

20 (6) Is actually in need and has not sufficient income
21 or other resources to provide a subsistence compatible
22 with decency and health; except that in making this de-
23 termination an amount not to exceed the first eighty-five
24 dollars per month of earned income plus one half of
25 earned income in excess of eighty-five dollars per month
26 shall be disregarded.

Sec. 16. *Hearing by Board of Review.*—An applicant for or a recipient of public assistance or medical assistance for the aged under this chapter shall be afforded an opportunity for a hearing before the board of review of the state department when:

(1) His application is denied or he is denied the opportunity to apply.

(2) His application is not acted upon with reasonable promptness.

(3) His grant of assistance is not forthcoming with reasonable promptness after he has been determined to be eligible therefor.

(4) He deems the grant inadequate.

(5) The grant is revoked.

(6) The grant is reduced.

The state department shall inform applicants and recipients in writing of their right to a hearing, and such a hearing shall be afforded upon request in writing setting forth the reasons it is desired.

Sec. 30. *Grants Conditional.*—A grant of public assistance or medical assistance for the aged shall be subject to:

(1) Reconsideration, revocation or change.

(2) Appropriation by the Legislature of public funds.

(3) Amendment or repeal.

(4) Continuation of federal grants-in-aid.

Article 5-a. The State of West Virginia Public Assistance Medical Services Fund.

Section

1. Medical services fund.
2. Payments into medical services fund.
3. Payments from medical services fund.

Section 1. *Medical Services Fund.*—In order that the state of West Virginia may receive full advantage of the provisions of the Federal Social Security Act, as amended, whereby federal grants-in-aid may be used on behalf of recipients of public assistance and recipients of medical assistance for the aged for medical care or any other type

7 of remedial care recognized by law, the state department
8 of public assistance is authorized, empowered and di-
9 rected to establish a special fund to be known as "The
10 State of West Virginia Public Assistance Medical Serv-
11 ices Fund", hereinafter referred to as "the fund". The
12 fund shall be only for the purpose of providing necessary
13 medical services for recipients of assistance and of medi-
14 cal assistance for the aged, and any balance in the fund
15 at the end of any fiscal year shall remain in the fund and
16 shall not expire or revert. Payments shall be made out
17 of the fund upon requisition of the director by means of
18 a warrant signed by the auditor and treasurer.

Sec. 2. *Payments into Medical Services Fund.*—The
2 fund shall consist of payments made into the fund with
3 respect to recipients of assistance and recipients of medi-
4 cal assistance for the aged out of state money appropri-
5 ated for the purposes of old age assistance or medical
6 services and such federal grants-in-aid as are available
7 for these purposes under the Federal Social Security Act,
8 as amended. The amount of such payments into the fund
9 shall be fixed from time to time by the director, and shall
10 be sufficient to pay the costs of necessary medical services
11 as determined by the director to be feasible in accordance
12 with section three of this article.

Sec. 3. *Payments from Medical Services Fund.*—Recipi-
2 ents of assistance and recipients of medical assistance for
3 the aged shall be entitled to have costs of necessary medi-
4 cal services paid out of the fund, in such amounts, and to
5 the extent and in the manner determined from time to
6 time to be feasible by the director pursuant to rules,
7 regulations and standards established by him. Such rules,
8 regulations and standards shall be established on the
9 basis of money available for the purpose, the number of
10 recipients, the experience with respect to the incidence of
11 illness, disease, accidents and other causes among such
12 recipients causing them to require medical services and
13 the costs thereof, the amounts which recipients require
14 otherwise in order to maintain a subsistence compatible
15 with decency and health, and any other factors consid-
16 ered relevant and proper by the director.

Article 11. General Provisions.**Section****16. Public assistance lists and records; misuse.****Section 16. *Public Assistance Lists and Records; Misuse.***

2 —The department of public assistance shall make avail-
3 able for public inspection by the tenth of each month a
4 separate alphabetical list of the names and addresses of all
5 persons receiving any form of relief assistance except
6 recipients of medical assistance for the aged during the
7 preceding month together with the amounts of such re-
8 lief assistance. This information shall be delivered to the
9 clerk of each county court in the state who shall immedi-
10 ately file the same in his office with respect to persons
11 receiving such assistance as residents of that county. Such
12 information shall be retained in the files of said clerks
13 of the county courts for a period of two years from the
14 date of receipt thereof. All information other than names,
15 addresses and amounts of such relief assistance shall be
16 considered as confidential.

17 It shall be unlawful, for commercial or political pur-
18 poses of any nature, for any person or persons, body,
19 association, firm, corporation or other agency to solicit,
20 disclose, receive, make use of, or to authorize, knowingly
21 permit, participate in, or acquiesce in the use of, any lists
22 of names of, or any information concerning, persons ap-
23 plying for or receiving relief assistance, directly or in-
24 directly derived from the records, papers, files or com-
25 munications of the department of public assistance or
26 acquired in the course of performance of official duties.
27 The violation of this provision is a misdemeanor, punish-
28 able upon conviction, by a fine of not more than one thou-
29 sand dollars or imprisonment of not more than six months,
30 or both.

31 For the protection of applicants and recipients of relief
32 assistance, the department of public assistance shall be
33 required to establish reasonable rules and regulations gov-
34 erning the custody, use and preservation of the records,
35 papers, files and communications of the department.

RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 2

(By Mr. Cruikshank)

[Adopted October 5, 1960.]

Providing for the Joint Committee on Government and Finance to make a study of the feasibility of an appropriation to authorize the Conservation Commission to acquire by purchase a railroad in Pocahontas County for its value in attracting tourists trade.

WHEREAS, The Mower Lumber Company has closed its timber operation at Cass, Pocahontas County, West Virginia, and among its assets to be disposed of is a branch railroad operated by steam locomotives; and

WHEREAS, This railroad traverses the highest elevation in the east; and its tremendous value as a scenic attraction for thousands of tourists and visitors to our State is recognized; and it is in the process of being disposed of for a "junk" price; and

WHEREAS, Other states, particularly the State of North Carolina, have recognized the importance of such an attraction and similar enterprises are in operation there; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance direct that a study of the feasibility of acquiring aforesaid railroad and its equipment be made promptly and that the study include the possible cost of such an undertaking and its possible value as a tourist attraction in connection with or separate from the general parks and recreation program of the Conservation Commission;

That the committee be authorized to designate additional members of the Legislature to assist in such study as they deem necessary;

That the expenses necessary to conduct this study and to make the necessary report as early as possible be paid from the legislative appropriation for joint expenses in the 1960-61 appropriation bill;

That the members of the committee and the legislators so designated shall receive twenty-five dollars per diem and ten cents per mile for transportation as expenses actually incurred in the discharge of their duties.

HOUSE CONCURRENT RESOLUTION NO. 3

(By Mr. Floyd and Mr. Zabeau)

[Adopted October 5, 1960.]

Commending the Division of Vocational Rehabilitation, West Virginia Board of Vocational Education, for rehabilitating into gainful employment 3,023 disabled West Virginians, and thereby winning for West Virginia first place national rank among state vocational rehabilitation programs for the 1959-60 fiscal year.

WHEREAS, It is basic to our way of life and government that every American shall have the opportunity to work, and thus to attain as high an economic and social stature as his abilities will warrant; and

WHEREAS, Such individual attainments collectively enhance the economic and social posture of West Virginia and the United States; and

WHEREAS, Persons who have become mentally or physically disabled are handicapped in respect to attaining such maximum economic and social stature, and therefore must be assisted if such attainment is to be theirs; and

WHEREAS, The Division of Vocational Rehabilitation, West Virginia Board of Vocational Education, is the primary agency of government empowered by law to prepare disabled men and women of West Virginia for, and place them in, suitable employment, thus helping them to reach their maximum potentials of economic and social life; and

WHEREAS, This agency, during the 1959-60 fiscal year, prepared 3,023 disabled West Virginia men and women — the greatest number in the history of vocational rehabilitation in West Virginia—for, and place them in, gainful, remunerative jobs, and as a result of rehabilitating these deserving persons into rewarding and satisfying lives, brought high national honor to West Virginia by winning for the State number one rank among state vocational rehabilitation programs for the 1959-60 fiscal year; and

WHEREAS, This accomplishment of rehabilitating 3,023 disabled persons has lowered the number of unemployed by 3,023, and has raised the number of taxpayers by the same amount; and

WHEREAS, The social value of this accomplishment, although it cannot be determined in monetary terms, is likewise important; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Division of Vocational Rehabilitation, West Virginia Board of Vocational Rehabilitation, hereby be commended for its accomplishment of restoring this record number of disabled, jobless West Virginia men and women into remunerative jobs, and for bringing high national honor to West Virginia as the number one state in vocational rehabilitation of its disabled citizens during the 1959-60 fiscal year.

HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Speaker, Mr. Pauley)

[Adopted October 5, 1960.]

Declaring the intent of the Legislature to recognize the authority of the Board of Public Works to meet apparent emergencies and the willingness of the Legislature to cooperate.

WHEREAS, The Governor, by proclamation, called this Legislature into extraordinary session to provide and appropriate additional revenue for the State Economic Recovery Program, as outlined therein; and

WHEREAS, The Governor suggested the Legislature request immediate release for expenditure of all these funds in order to accelerate the program; and

WHEREAS, The provisions of chapter five, article five, and other articles of the Code of West Virginia authorize the Board of Public Works to approve expenditure schedules, the limitations on expenditures, the transfer between items of appropriation, expenditures of excess collections; and

WHEREAS, It appears from financial statements presented to the Legislature by the Conservation Commission that a sum approximating \$800,000.00 remains unexpended from the first quarter allotment of these funds for the current fiscal year; and

WHEREAS, It further appears from financial statements presented to the Legislature by the Conservation Commission that a sum approximating \$2,400,000.00 of total funds appropriated to the Conservation Commission for construction of new facilities, for repairs and improvements at state parks and state forests, and for construction of lakes and recreational areas, including materials, water supplies, roadways, building repairs, picnic areas, timber stand improvements, swimming facilities, and camping facilities remains unexpended as of October 3rd; and

WHEREAS, Upon request of the Conservation Commission the Board of Public Works may transfer certain sums of the remaining appropriation from the third and fourth quarters of the expenditure schedule allotments to the second and/or third quarters, and that the funds so transferred may be used for the purpose of stepping up the State Economic Recovery Program as outlined herein; and

WHEREAS, The Legislature, meeting in regular session in January, one thousand nine hundred sixty-one, or prior thereto, will recognize any emergency and provide by proper appropriation the funds necessary to restore the allotment balance of the funds of the Conservation Commission for this purpose; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Legislature hereby expresses and declares its intent to endorse any action by the Board of Public Works to follow the suggestions outlined herein, and for the information of the Board of Public Works, copies of this resolution shall be forwarded to each member thereof.

SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Traubert)

[Adopted October 5, 1960.]

Providing for an interim committee to make a study and survey looking to an amendment of the West Virginia liquor control laws to legalize the sale of intoxicating liquor by the drink for consumption on the premises where sold.

WHEREAS, The Governor has, by proclamation, called this Legislature into extraordinary session to consider and act upon legislation to permit maximum participation by the State of West Virginia in the benefits provided under an act of Congress, entitled "Social Security Amendments of 1960", and to provide and appropriate additional revenue for the purpose; to provide and appropriate additional revenue for the purchase, development, improvement, and expansion of state parks, state forests, and scenic attractions; the reclamation of strip-mined areas; the improvement of streams; the development of recreational areas and facilities, and for the expansion of the Department of Public Safety to the maximum strength now authorized by law; and

WHEREAS, This Legislature is concerned that the rights of its elderly citizens who can qualify under the provisions of the Act of Congress, entitled "Social Security Amendments of 1960 (H. R. 12580)", shall be preserved; and

WHEREAS, State economic recovery and the safety of our State is of continuing concern to the Legislature and to the people of our State; and

WHEREAS, Little or no opportunity will be afforded for immediate final permanent action by the extraordinary session upon these proposed measures until careful study and deliberation have been made by the Legislature; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That an interim committee be created to make a study and survey of the amount of revenue to be derived or expected if our West Virginia liquor control laws were amended to legalize intoxicating liquors sold in the State by the drink for consumption on the premises where sold; to include in such study and survey an estimate of the amount of such revenue now being lost to the State through the apparent violation of the existing laws which prohibit such sales; an appraisal of the reaction of the people of the State to the proposal to submit a recommendation of the Legislature to consider the use of such a source of revenue for the purpose of financing all or any part of the proposals included in the call of the Governor;

That the membership of the committee be composed of five members of the Senate to be appointed by the President thereof, and five members of the House of Delegates to be appointed by the Speaker of the House. Not more than three members of each House shall be of the same political party, with the committee to select their own chairman or co-chairman; and, be it

Resolved further, That the expenses necessary to conduct this study and survey and to make the necessary reports be paid from legislative appropriation made for joint expenses in the 1960-61 appropriation bill or other available appropriations of the Legislature;

That the members of the committee shall receive twenty-five dollars per diem and ten cents per mile for transportation.

SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Martin)

[Adopted October 5, 1960.]

Memorializing Congress for legislation covering medical insurance for the aged.

WHEREAS, This Legislature, assembled in extraordinary session, urges the Congress of the United States to enact legisla-

tion extending the social security system to include medical insurance for the aged; and

WHEREAS, Unless such a program of self-financed insurance is adopted, the State of West Virginia will have an increasingly large and costly burden in paying for the care of the medically needy as this group can grow in size, and the cost of medical care will rise as long as it is purely a welfare program; and

WHEREAS, On the other hand, the social security method will allow the ordinary person to pay a small premium and have a paid-up medical insurance policy on retirement as a matter of earned right, which will reduce the number who will require assistance on a "needs" test and place the whole program on a sound fiscal basis; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That in this manner a very important and very difficult problem of our senior citizens could be met and solved, with emphasis on dignity and self-reliance rather than charity and dependence; and this Legislature of West Virginia, assembled in extraordinary session, does hereby request legislation for such medical insurance for the aged on the part of the Congress.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1961

FIRST EXTRAORDINARY SESSION (June 14-16, 1961)

CHAPTER 1

(House Bill No. 12—By Mr. Speaker,
Mr. Singleton)

[Passed June 15, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration fees for pesticides.

Article 16-a. Pesticides.

Section

4. Registration.

Be it enacted by the Legislature of West Virginia:

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

Section 4. *Registration.* — A. Every economic poison
2 which is distributed, sold, or offered for sale within this
3 state or delivered for transportation or transported in
4 intrastate commerce or between points within this state
5 through any point outside this state shall be registered
6 in the office of the commissioner, and such registration
7 shall be renewed annually: *Provided, That products*

8 which have the same formula, are manufactured by the
9 same person, the labeling of which contains the same
10 claims, and the labels of which bear a designation identifying the product as the same economic poison may be
11 registered as a single economic poison; and additional
12 names and labels shall be added by supplement statements during the current period of registration. The
13 period of registration shall be for one year, beginning
14 January one and ending December thirty-one of that
15 year. The registrant shall file with the commissioner a
16 statement including:

17 1. The name and address of the registrant and the name
18 and address of the person whose name will appear on
19 the label, if other than the registrant;

20 2. The name of the economic poison;

21 3. A complete copy of the labeling accompanying the
22 economic poison and a statement of all claims to be made
23 for it including directions for use; and

24 4. If requested by the commissioner a full description
25 of the tests made and the results thereof upon which the
26 claims are based, and the analytical method or methods
27 employed in determining the percentage of each active
28 ingredient listed on the label to be registered. In the
29 case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was
30 registered or last registered.

31 B. The registrant shall pay an annual fee of ten dollars
32 for each of the first twenty economic poisons registered
33 and five dollars for each additional label registered. Such
34 fees to be deposited in the treasury of the state and to
35 the credit of a special fund to be used only for carrying
36 out the provisions of this article, and shall be expended
37 upon order of the commissioner of agriculture.

38 C. The commissioner, whenever he deems it necessary
39 in the administration of this article, may require the submission of the complete formula of any economic poison.
40 If it appears to the commissioner that the composition
41 of the item is such as to warrant the proposed claims for
42 it and if the item and its labeling and other material

48 required to be submitted to comply with the requirements
49 of section three of this article, he shall register the item.

50 D. If it does not appear to the commissioner that the
51 item is such as to warrant the proposed claims for it or
52 if the item and its labeling and other material required to
53 be submitted do not comply with the provisions of this
54 article, he shall notify the registrant of the manner in
55 which the item, labeling, or other material required to
56 be submitted fails to comply with this article so as to
57 afford the registrant an opportunity to make the neces-
58 sary corrections. If, upon receipt of such notice, the reg-
59 istrant insists that such corrections are not necessary and
60 requests in writing that the item be registered, a review
61 of this matter may be brought before a board of review.

62 1. The board of review shall consist of five individual
63 members.

64 a. Two of these members shall be appointed by the
65 dean of the college of agriculture, forestry and home eco-
66 nomics of West Virginia University.

67 b. One member of the board of review shall be ap-
68 pointed by the commissioner of agriculture.

69 c. One member of the board of review shall be ap-
70 pointed by the registrant.

71 d. One member of the board of review shall be ap-
72 pointed by the governor of the state of West Virginia
73 and shall act as chairman.

74 2. This board shall have the power to subpoena wit-
75 nesses and employ competent help.

76 3. The decision of this board of review shall be final.

77 4. All expenses of the board shall be paid by the
78 commissioner, except all salaries, fees and expenses ac-
79 crued by the appointee of the registrant.

80 E. In order to protect the public, the commissioner,
81 on his own motion, may at any time, cancel the registra-
82 tion of an economic poison.

83 F. Notwithstanding any other provisions of this ar-
84 ticle, registration is not required in the case of an eco-
85 nomic poison shipped from one plant within this state to
86 another plant within this state operated by the same
87 person.

CHAPTER 2

(Com. Sub. for Senate Bill No. 5—Originating in the
Senate Committee on Finance)

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to make supplementary appropriation of public moneys out of the state treasury for the state department of welfare.

Section

1. Supplementary appropriation.

Be it enacted by the Legislature of West Virginia:

Section 1. *Supplementary Appropriation.*—In addition and as a supplement to the appropriation made by the Enrolled Budget Bill enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, there is hereby appropriated from the state fund, general revenue, conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, as amended, the following additional sums of money for the purposes hereinafter stated:

53—Department of Welfare

Supplementary Appropriation to Account Number 405	
Personal Services	\$ 1,047,846
Current Expenses	192,500
Equipment	6,590
Public Assistance Grants (Classified Aid)	4,930,252
Medical Services	669,791
Retirement Fund	116,163
 Total	 \$ 6,963,142

This supplementary appropriation shall be paid out of surplus funds in the state fund, general revenue, as evidenced by a revised revenue statement submitted to the Legislature by the board of public works under date of June sixteenth, one thousand nine hundred sixty-one,

26 in accordance with the provisions of article six, section
27 fifty-one of the state constitution. This supplementary
28 appropriation shall implement through the state depart-
29 ment of welfare this state's participation in the new fed-
30 eral program of aid to dependent children of unemployed
31 parents.

CHAPTER 3

(Senate Bill No. 10—By Mr. Carson, Mr. President)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article fourteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporate powers of West Virginia business development corporations.

Article 14. West Virginia Business Development Corporations.

Section

5. Corporate powers.

Be it enacted by the Legislature of West Virginia:

That section five, article fourteen, 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:

Section 5. *Corporate Powers.*—In furtherance of the
2 purposes set out in section two of this article, and to aid
3 in providing an effective program to alleviate conditions
4 of substantial and persistent unemployment, under-
5 employment, and lack of stable economic development,
6 by taking effective steps in planning and financing
7 economic redevelopment, utilizing such facilities and
8 resources as are provided by the provisions of the
9 federal "Area Redevelopment Act of 1961", and the
10 "West Virginia Industrial Development Authority Act
11 of 1961", and in addition to the powers conferred on
12 business corporations by the provisions of this chap-

13 ter, such corporation shall, subject to the restrictions
14 and limitations herein contained, have the following
15 powers:

16 (a) To enter into contracts and incur liabilities for any
17 purposes of the corporation; except that the corporation
18 shall not incur any secondary liability by way of guaranty
19 or endorsement of the obligations of any person, firm,
20 corporation, joint-stock company, association or trust, or
21 in any other manner.

22 (b) To borrow money for any of the purposes of the
23 corporation, including, but without implied limitation, the
24 right to obtain loans under the provisions of "Title V of
25 the Small Business Investment Act of 1958", as amended,
26 or from any other similar governmental agency; to issue
27 therefor its bonds, debentures, notes or other evidences
28 of indebtedness, whether secured or unsecured, and to
29 secure the same by mortgage, pledge, deed of trust or
30 other lien on its property, franchises, rights and privileges
31 of every kind and nature or any part thereof or interest
32 therein, without securing stockholder or member ap-
33 proval.

34 (c) To make loans to any person, firm, corporation,
35 joint-stock company, association or trust, and to establish
36 and regulate the terms and conditions with respect to
37 any such loans and the charges for interest and services
38 connected therewith; however, no loans shall be made
39 hereunder unless the loan applied for is not otherwise
40 available through ordinary banking channels, private
41 lenders, or other governmental agencies, on reasonable
42 terms.

43 (d) To purchase, receive, hold, lease, or otherwise
44 acquire and to sell, convey, transfer, lease, or otherwise
45 dispose of real and personal property, together with such
46 rights and privileges as may be incidental and appurte-
47 nant thereto and the use thereof, including, but not re-
48 stricted to, any real or personal property acquired by
49 the corporation from time to time in the satisfaction of
50 debts or enforcement of obligations.

51 (e) To acquire, by gift or purchase, the good will,
52 business, rights, real and personal property, both tangible

53 and intangible, and other assets, or any part thereof, or
54 interest therein, from any persons, firms, partnerships,
55 corporations, joint-stock companies, associations or trusts,
56 and to assume, undertake or pay the obligations, debts and
57 liabilities of any such person, firm, partnership, corpora-
58 tion, joint-stock company, association or trust; to acquire
59 improved or unimproved real estate for the purpose of
60 constructing industrial plants or other business establish-
61 ments thereon or for the purpose of disposing of such real
62 estate to others for the construction of industrial plants
63 or other business establishments; and to acquire, con-
64 struct or reconstruct, alter, repair, maintain, operate, sell,
65 convey, transfer, lease or otherwise dispose of industrial
66 plants or business establishments.

67 (f) To acquire, subscribe for, own, hold, sell, assign,
68 transfer, mortgage, pledge or otherwise dispose of the
69 stock, shares, bonds, debentures, notes or other securities
70 and evidences of interest in, or indebtedness of, any per-
71 son, firm, corporation, joint-stock company, association
72 or trust; and while the owner or holder thereof to exer-
73 cise all the rights, powers and privileges of ownership,
74 including the right to vote any such shares of stock.

75 (g) To mortgage, pledge, or otherwise encumber any
76 property, right or thing of value, acquired pursuant to the
77 powers contained in paragraphs (d), (e), or (f), as se-
78 curity for the payment of any part of the purchase price
79 thereof.

80 (h) To cooperate with and avail itself of the facilities
81 of the department of commerce and the office of commis-
82 sioner of commerce of this state, the West Virginia in-
83 dustrial development authority, the federal area re-
84 development administrator, and any similar federal and
85 state governmental agencies and officers; and to cooperate
86 with and assist, and otherwise encourage organizations
87 in the various communities of the state in the promotion,
88 assistance, and development of the business prosperity
89 and economic welfare of such communities or of this state
90 or any part thereof.

91 (i) To do all acts and things necessary or convenient
92 to carry out the powers expressly granted in this article.

CHAPTER 4

(House Bill No. 9—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section forty-seven, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obstructions, dams or other structures in streams or watercourses and fish ladders, ways or flumes in connection therewith; granting to the director of the department of natural resources authority under certain circumstances to permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing suitable fish ladder, way or flume; and providing penalties for violation thereof and specifying a violation constitutes an abatable nuisance.

Article 3. Crimes against Property.

Section

47. Dams or obstructions in watercourses; penalty.

Be it enacted by the Legislature of West Virginia:

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

Section 47. Dams or Obstructions in Watercourses;

2 *Penalty.*—No person shall fall any timber and permit the
3 same to remain in any navigable or floatable stream of
4 this state when to do so shall obstruct the passage of
5 boats, rafts, staves, ties or timber of any kind. No person
6 shall construct any dam or other obstruction more than
7 ten feet in height across any stream or watercourse unless
8 the design and proposed construction shall have been
9 declared to be safe by an order entered by the public
10 service commission after full investigation. Except as
11 may be provided by chapter twenty of this code, no per-
12 son shall construct or maintain any dam or other struc-
13 ture in any stream or watercourse, which shall in any way

14 prevent or obstruct the free and easy passage of fish up
15 or down such stream or watercourse, without first pro-
16 viding as a part of such dam or other structure a suitable
17 fish ladder, way or flume, so constructed as to allow fish
18 easily to ascend or descend the same; which ladder,
19 way or flume shall be constructed only upon plans, in a
20 manner, and at a place, satisfactory to the natural re-
21 sources commission: *Provided, however,* That if the di-
22 rector of the department of natural resources determines
23 that there is no substantial fish life in such stream or
24 watercourse, or that the installation of a fish ladder, way
25 or flume would not facilitate the free and easy passage of
26 fish up or down a stream or watercourse, or that an in-
27 dustrial development project requires the construction of
28 such dam or other structure and the installation of an
29 operational fish ladder, way or flume is impracticable, he
30 may, in writing, permit the construction or maintenance
31 of a dam or other structure in a stream or watercourse
32 without providing a suitable fish ladder, way or flume;
33 and in all navigable and floatable streams provisions shall
34 be made in such dam or structure for the passage of boats
35 and other crafts, logs and other materials: *Provided,*
36 *however,* That this section shall not relieve such person
37 from liability for damage to any riparian owner on ac-
38 count of the construction or maintenance of such dam.

39 Any person who shall violate any of the provisions of
40 this section shall be guilty of a misdemeanor, and, upon
41 conviction thereof, shall be fined not exceeding one thou-
42 sand dollars, or imprisoned in the county jail not exceed-
43 ing one year, or both fined and imprisoned, and, whether
44 conviction be had under this section or not, such violation
45 shall be deemed a nuisance, which may be abated at the
46 suit of any citizen or taxpayer, the county court of the
47 county, or, as to fish ladders, at the suit of the natural
48 resources commission, and, if the same endangers county
49 roads the county court may abate such nuisance peace-
50 ably without such suit.

CHAPTER 5

(Com. Sub. for Senate Bill No. 6—Originating in the
Senate Committee on Finance)

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, and section twenty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend article two of said chapter twenty by adding thereto two new sections, designated sections forty-four-a and forty-four-b, to provide that certain revenues received by the department of natural resources shall be paid as special revenue to said department; to exempt persons over sixty-five years of age from game and fish licensing requirements; and relating to the issuance of a national forest hunting and trapping license, a national forest fishing license, and the amount of fee therefor.

Article

1. Organization and Administration.
2. Game and Fish.

Be it enacted by the Legislature of West Virginia:

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

Article 1. Organization and Administration.

Section

9. Fiscal management.

Section 9. *Fiscal Management.*—Subject to any controlling rules and regulations of the department of finance and administration relating to state fiscal management policies and practices, the director shall establish in the department an adequate budget, finance and accounting

6 system which will currently and accurately reflect the
7 fiscal operations and conditions of the department at all
8 times. The department's accounting and auditing services
9 shall be on a fiscal-year basis.

10 The director shall select and designate a competent and
11 qualified person as department fiscal officer who, under
12 the supervision of the director, shall be responsible for
13 all budget, finance and accounting services of the depart-
14 ment. All moneys received by the department shall be
15 recorded and shall be paid as special revenue to the de-
16 partment of natural resources, as provided in paragraph
17 (i), section two, article two, chapter twelve of this code,
18 except in cases wherein certain receipts of the depart-
19 ment are by specific provisions of this chapter required
20 to be paid into some special fund or funds.

Article 2. Game and Fish.

Section

27. Necessity for licensing.

44-a. Class I; national forest hunting and trapping license.

44-b. Class J; national forest fishing license.

Section 27. *Necessity for Licensing.*—Except as other-
2 wise provided by law, no resident who has reached his
3 fifteenth birthday and who has not reached his sixty-
4 fifth birthday, and no nonresident, regardless of age,
5 shall at any time take, hunt, pursue, trap for, kill or
6 chase any wild animals, wild birds, or fish for, take, kill
7 or catch any fish, amphibians or aquatic life of any kind
8 whatsoever in this state without first having secured a
9 license or permit, and then only during the respective
10 open seasons. No person under the age of fifteen years
11 shall hunt or chase any wild animals or wild birds upon
12 lands of another unless accompanied by a licensed adult.

13 A resident or nonresident member of any club, or-
14 ganization or association, or persons owning or leasing a
15 game preserve, or fish preserve, plant or pond in this
16 state shall not hunt or fish therein without first securing
17 a license or permit as required by law: *Provided, how-*
18 *ever,* That resident landowners or their resident children,
19 or bona fide resident tenants of such land may, without
20 a permit or license, hunt and fish on their own land dur-

21 ing open seasons in accordance with laws and regulations
22 applying to such hunting and fishing unless such lands
23 have been designated as a wildlife refuge or preserve.
24 Licenses and permits shall be of the kinds and classes
25 set forth in this article, and shall be conditioned upon
26 the payment of the fees established therefor.

Sec. 44-a. *Class I; National Forest Hunting and Trapping License.*—A class I license shall be a national forest hunting and trapping license and shall entitle the licensee to hunt all game animals and game birds and trap all fur-bearing animals in season excepting beaver, on all national forest land in West Virginia. It shall be issued only to a nonresident holding a class E or class L license or to a resident holding a class A or AB license. The fee therefor shall be one dollar. The revenue derived from the sale of this license shall be used for management and propagation of game and fish on national forest land and for no other purpose. The department of natural resources of West Virginia shall enter into a cooperative agreement with the United States forest service, such agreement to define the means and methods to be taken to improve the wildlife and fish resources and to program the expenditure of all funds derived from this license.

Sec. 44-b. *Class J; National Forest Fishing License.*—A class J license shall be a national forest fishing license and shall entitle the licensee to fish in waters within national forest land in West Virginia. It shall be issued only to a nonresident holding a class E or class F license or to a resident holding a class B or class AB license. The fee therefor shall be one dollar. The revenue derived from the sale of this license shall be used only for management and propagation of game and fish on national forest land and for no other purpose. The department of natural resources of West Virginia shall enter into a cooperative agreement with the United States forest service, such agreement to define the means and methods to be taken to improve the wildlife and fish resources and to program the expenditure of all funds derived from this license.

CHAPTER 6

(Senate Bill No. 1—By Mr. Carson, Mr. President)

[Passed June 16, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article five, by adding thereto a new section, designated section six-a, all relating to public assistance and medical assistance for the aged; and more particularly to the eligibility of a dependent child and the relative of a dependent child for public assistance; and the commissioner of welfare's rule-making powers.

Article 5. Public Assistance and Medical Assistance for the Aged.

Section

5. Dependent children, relatives of dependent children, and foster home care of dependent children.
- 6-a. Commissioner's rule-making powers.

Be it enacted by the Legislature of West Virginia:

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

- Section 5. *Dependent Children, Relatives of Dependent Children, and Foster Home Care of Dependent Children.*
- 3 —(a) A dependent child shall be eligible for public as-
 - 4 sistance who:
 - 5 (1) Has not attained the age of eighteen years.
 - 6 (2) Is deprived of parental support or care by reason
 - 7 of the death, continued absence from home, unemploy-
 - 8 ment, physical or mental incapacity of a parent, or by
 - 9 reason of any other cause as the laws of the federal
 - 10 government governing federal aid to dependent children

11 may from time to time include: *Provided, however*, That
12 such unemployed parent shall not have refused without
13 good cause to accept employment, in which he is able to
14 engage, which (1) is offered through public employment
15 offices, or (2) is otherwise offered by an employer if the
16 offer is determined by the department of employment
17 security after notification by such employer to be a bona
18 fide offer of such employment: *Provided further*, That
19 such determination is not in conflict with Department of
20 Health, Education, and Welfare of the United States
21 regulations.

22 It is further provided that any aid under this plan to
23 which any child or relative might otherwise be entitled,
24 shall be denied for any month in which the parent of such
25 child receives unemployment compensation under an un-
26 employment compensation law of any state, including
27 West Virginia, or of the United States for any week any
28 part of which is included in such month.

29 (3) Is living with his father, mother, grandfather,
30 grandmother, brother, sister, stepfather, stepmother, step-
31 brother, stepsister, uncle, aunt, first cousin, nephew,
32 niece, or any other relative as the laws of the federal
33 government governing federal aid to dependent children
34 may from time to time include, in a place of residence
35 maintained by one or more of such relatives as his or
36 their own home, or is living in a foster family home in
37 accordance with the provisions of the laws of the fed-
38 eral government governing federal aid to dependent
39 children.

40 (4) Has resided in the state for one year immediately
41 preceding application for public assistance; or, was born
42 within one year immediately preceding the application
43 of a mother who resided within the state for one year
44 immediately preceding such birth; or, was born within
45 one year immediately preceding the application, if the
46 parent or other relative with whom the child is living
47 has resided in the state for one year immediately pre-
48 ceding such birth.

49 (5) Is actually in need and has not sufficient income
50 or other resources to provide a subsistence compatible
51 with decency and health.

52 (b) The relative of a dependent child shall be eligible
53 for public assistance for any month in which public as-
54 sistance is paid with respect to such child, who:

55 (1) Is the father, mother, grandfather, grandmother,
56 brother, sister, stepfather, stepmother, stepbrother, step-
57 sister, uncle, aunt, first cousin, nephew, niece, or any
58 other relative of a dependent child as the laws of the
59 federal government governing federal aid to dependent
60 children may from time to time include.

61 (2) Maintains himself, or together with any one or
62 more of the other specified relatives, a place of residence
63 as his or their own home, and is the person with whom
64 a dependent child is living in such place of residence.

65 (3) Is actually in need and has not sufficient income
66 or other resources to provide a subsistence compatible
67 with decency and health.

Sec. 6-a. *Commissioner's Rule-making Powers.*—The
2 rule-making powers of the commissioner of welfare shall
3 include authority to establish rules and regulations modi-
4 fying eligibility requirements for public assistance and
5 medical assistance for the aged, and, in addition, shall in-
6 clude authority to provide the necessary procedures for
7 the preparation of plans and for classifying and reporting
8 expenditures made with respect to recipients of public as-
9 sistance and medical assistance for the aged to the extent
10 necessary and in such manner as to permit the state and
11 its citizens to obtain the maximum benefits provided
12 under the Federal Social Security Act and any laws
13 amendatory of or supplementary thereto that may here-
14 after be enacted.

CHAPTER 7

(Senate Bill No. 4—By Mr. Carson, Mr. President)

[Passed June 16, 1961; In effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chap-
ter nine of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; to amend article four of said chapter nine by adding thereto a new section, designated section ten-a; and to amend article ten of said chapter nine by adding thereto a new section, designated section five-a, to provide that the commissioner of welfare shall receive a yearly salary of eight thousand dollars from appropriated state revenue; to provide for the dismissal or reinstatement of a county director of public assistance, an assistant or employee of a county council, who has obtained permanent status under the state's civil service system, by the commissioner of welfare in accordance with procedures provided by the civil service act; and to establish in the department of welfare a special fund to be known as "Special County General Relief Fund" and to provide for its receipts and disbursements therefrom.

Article

- 3. Commissioner of Welfare.**
- 4. County Public Assistance Council.**
- 10. Fiscal Provisions.**

Be it enacted by the Legislature of West Virginia:

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

Article 3. Commissioner of Welfare.

Section

- 5. Compensation.**

Section 5. *Compensation.*—Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commissioner of welfare shall receive a yearly salary of eight thousand dollars from appropriated state revenue; and, in addition, the necessary traveling expenses incident to the performance of his duties. Requisition for traveling expenses shall be accompanied by such sworn and itemized statement which shall be filed with the auditor and preserved as a public record.

Article 4. County Public Assistance Council.**Section**

- 10-a. Dismissal of county director of public assistance, the assistants and employees of a county council.

Section 10-a. *Dismissal of County Director of Public Assistance, the Assistants and Employees of a County Council.*—After a county director of public assistance, an assistant or employee of a county council obtains permanent status under the state's civil service system, he may only be dismissed or reinstated by the commissioner of welfare in accordance with procedures provided by the civil service act.

Article 10. Fiscal Provisions.**Section**

- 5-a. Special county general relief fund.

Section 5-a. *Special County General Relief Fund.*—Such part or all of a county general relief fund as can be matched by federal grants may be requisitioned from the county court by the state advisory board and placed in a special fund in the department of welfare to be known as "Special County General Relief Fund", from which the commissioner of welfare shall pay for the services in a county not inconsistent with those for which the county general relief fund was established; but only to the extent of the amount requisitioned from that county and matched by grants from the federal government.

Authority is granted to the county court of a county to pay in its discretion so much of its general county fund as is provided in its levy for administration expenses of the county council, and as can be matched by grants from the federal government, into the special fund in the department of welfare as herein provided; and when so paid, the commissioner of welfare shall pay the administrative expenses of the county council of a county to the extent of the amount so paid by the county court of that county into the special fund and matched by grants from the federal government.

CHAPTER 8

(House Bill No. 8—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of commissioners and jurors in eminent domain proceedings.

Article 2. Procedure.

Section

19. Compensation of commissioners and jurors.

Be it enacted by the Legislature of West Virginia:

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

Section 19. *Compensation of Commissioners and Jurors.*

2 —Each commissioner shall receive as compensation for
3 services in each eminent domain proceeding a reasonable
4 amount to be fixed by an order entered of record in the
5 proceeding, said compensation not to exceed the sum of
6 twenty-five dollars per day to be taxed as a part of the
7 costs of the proceeding.

8 The jurors shall receive the same compensation fixed
9 by law for jurors in felony cases, to be taxed as a part of
10 the costs of the proceeding.

CHAPTER 9

(House Bill No. 11—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one-a, chapter twenty-seven of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to powers and duties of the director of mental health.

Article 1-a. Department of Mental Health.

Section

4. Powers and duties of director.

Be it enacted by the Legislature of West Virginia:

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

Section 4. *Powers and Duties of Director.*—The director shall appoint the superintendents of the institutions named in section two hereof, and of any other state mental institutions hereafter created; shall supervise and coordinate their medical and fiscal administration, and may establish uniform policies for those institutions. He may transfer a patient from any state mental institution to any other institution or clinic under his control. By agreement between the director of mental health and the state commissioner of public institutions, a patient at a state mental institution may be transferred to an institution, other than correctional, under the supervision of the state commissioner of public institutions. The director of mental health shall have all the authority vested in the divisions of the department, as hereinafter provided, and shall appoint the supervisors of those divisions. He may prescribe rules and regulations to carry out his authority. The director shall make periodic reports to the governor and to the Legislature on the condition of the state mental institutions and on other matters within his authority, and shall include recommendations for improvement of the state mental institutions and any other matters affecting the mental health of the people of the state.

The director is hereby authorized and empowered to accept and use for the benefit of a state mental institution or institutions, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state mental institution or institutions, it shall be used as

31 specified, and the director is hereby vested with the title
32 to the property which is or may be the subject of such
33 gift or devise. Any gift or devise of any property or
34 thing which lawfully may be given and whatever profit
35 may arise from its use or investment shall be deposited
36 in a special revenue fund with the state treasurer, and
37 shall be used only as specified by the donor or donors.

38 Whenever it shall become necessary, the department
39 of mental health may condemn any interest, right or
40 privilege, land or improvement which in its opinion
41 may be necessary, in the manner provided by law for
42 the acquisition by this state of property for public
43 purposes. The state shall be under no obligation to
44 accept and pay for any property condemned, and shall
45 in no event pay for the same except from the funds
46 provided; and in any proceeding to condemn, such
47 orders shall be made by the court having jurisdiction
48 of the suit, action or proceedings as may be just to
49 the state and to the owners of property to be condemned,
50 and a bond or other security may be required by the
51 court securing such owners against any loss or damage
52 to be sustained by reason of the failure of the state
53 to accept and pay for the property, but such bond or
54 security shall impose no liability or debt on or of the
55 state as contemplated by the provisions of the constitu-
56 tion of the state in relation to state debt.

CHAPTER 10

(House Bill No. 7—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to the qualification and tenure of office of members of state boards and agencies.

Article 5. Terms of Office; Matters Affecting the Right to Hold Office.**Section**

2-a. Qualification and tenure of office of members of state boards and agencies.

Be it enacted by the Legislature of West Virginia:

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

Section 2-a. *Qualification and Tenure of Office of Members of State Boards and Agencies.*—Enrolled House Bill No. 472, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, relating to congressional districts, shall not affect the qualification or tenure of office of any person who was appointed a member of any state board or agency prior to the effective date thereof; however, all appointments made after the effective date thereof to any state board or agency, on which membership is affected by congressional district requirements shall be made in accordance with the congressional district arrangement provided by said bill.

CHAPTER 11

(House Bill No. 3—By Mr. Speaker, Mr. Singleton)

[Passed June 15, 1961; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five-b, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to exempt wages of persons employed under state's emergency employment program from suggestee execution.

**Article 5-b. Suggestion of the State and Political Subdivisions;
Garnishment and Suggestion of Public Officers.**

Section

12. Exemptions.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five-b, 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:

Section 12. *Exemptions.*—A judgment debtor to whom
2 money is due or to become due which would otherwise
3 be subject to suggestion under this article may have the
4 same exempted from levy in the manner and to the extent
5 provided by article eight of this chapter. In the case of
6 salary or wages the exemption may be claimed for sums
7 currently accruing but must be asserted anew as to any
8 salary or wages which shall begin to accrue after the next
9 payment date. Such exemption shall not be binding upon
10 the state, state agency or political subdivision of which
11 the judgment debtor is an officer or employee unless and
12 until a certificate of exemption or true copy thereof shall
13 have been delivered to the proper officer upon whom to
14 make service of a suggestee execution under this article.

15 Money due to any lawful beneficiary thereof from any
16 workmen's compensation, unemployment compensation,
17 pension or retirement, public assistance or relief fund or
18 system, or under the state's emergency employment pro-
19 gram as provided by section six, title two of Enrolled
20 Senate Bill No. 1 (Budget Bill), enacted by the Legisla-
21 ture of West Virginia, regular session, one thousand nine
22 hundred sixty-one, or any laws amendatory of, supple-
23 mentary or successor to, such program that may hereafter
24 be enacted, shall not be subject to suggestion under this
25 article.

26 Public obligations, whether in the form of bonds, notes,
27 certificates of indebtedness, or otherwise, and whether
28 negotiable or nonnegotiable, shall not be subject to sug-
29 gestion under this article.

CHAPTER 12

(Senate Bill No. 16—Originating in the Senate Committee
on Finance)

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional consumers sales tax, more particularly imposing an additional consumers sales tax, making provision for its levy, imposition, payment, collection, remission and assessment, providing that the moneys derived therefrom shall be paid by the tax commissioner into the state fund, general revenue, to be expended in whatever manner provided by law, providing that the provisions of said section three-a shall take effect upon the expiration of the additional consumers sales tax and the provisions in connection therewith as imposed and provided by Enrolled Senate Bill No. 3, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, and providing that the provisions of said section three-a shall expire on June thirtieth, one thousand nine hundred sixty-two.

Article 15. Consumers Sales Tax.

Section

3-a. Additional consumers sales tax.

Be it enacted by the Legislature of West Virginia:

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

Section 3-a. *Additional Consumers Sales Tax.*—For the
2 purpose of providing additional revenue for the state
3 general revenue fund and for the privilege of selling
4 tangible personal property and dispensing certain selected
5 services defined in section eight of this article, the vendor,
6 in addition to the tax imposed by section three of this
7 article, shall collect from the purchaser the tax provided

8 by this section, and shall pay the amount of such tax to
9 the tax commissioner in accordance with the provisions
10 of this article.

11 The amount of the tax shall be computed as follows:

12 On each sale, the additional sum of one cent (\$.01) on
13 each one dollar (\$1.00) of monetary consideration, or
14 fraction thereof, in excess of one dollar (\$1.00).

15 Except as otherwise provided in this section, all pro-
16 visions of this article relating to the levy, imposition,
17 payment, collection, remission and assessment of the
18 consumers sales tax imposed by section three of said ar-
19 ticle shall be applicable to the levy, imposition, payment,
20 collection, remission and assessment of such additional
21 tax.

22 Notwithstanding the provisions of section thirty of this
23 article, all moneys received by the tax commissioner from
24 the additional tax imposed by this section shall be paid
25 by him into the state fund, general revenue, to be ex-
26 pended in whatever manner provided by law.

27 The provisions of this section shall take effect upon
28 the expiration of the additional consumers sales tax and
29 the provisions in connection therewith as imposed and
30 provided by Enrolled Senate Bill No. 3, enacted by the
31 Legislature of West Virginia, regular session, one thou-
32 sand nine hundred sixty-one, and the provisions of this
33 section shall expire on June thirtieth, one thousand nine
34 hundred sixty-two.

CHAPTER 13

(Senate Bill No. 15—Originating in the Senate Committee
on Finance)

[Passed June 16, 1961; in effect July 1, 1961. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article fifteen-a,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to an addi-
tional use tax, more particularly imposing an additional

use tax, making provision relating to its levy, imposition, exemptions, payment, collection, remission and assessment, providing that all moneys derived therefrom shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law, providing that the provisions of said section two-a shall take effect upon the expiration of the additional use tax and the provisions in connection therewith as imposed and provided by Enrolled House Bill No. 481, enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, and that the provisions of said section two-a shall expire on June thirtieth, one thousand nine hundred sixty-two.

Article 15-a. Use Tax.

Section

2-a. Additional use tax.

Be it enacted by the Legislature of West Virginia:

That section two-a, article fifteen-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:

Section 2-a. *Additional Use Tax.*—For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such purchase price being exempt for the purpose of computing the additional excise tax imposed by this section two-a.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, exemptions, payment, collection, remission and assessment of the excise tax imposed by section two of this article shall be applicable to the levy, imposition, exemptions, payment, collection, remission and assessment of such additional tax as imposed by this section two-a.

Notwithstanding the provisions of section twenty-six of this article, all moneys received from the additional tax imposed by this section shall be paid into the state

21 fund, general revenue, to be expended in whatever man-
22 ner provided by law.

23 The provisions of this section shall take effect upon the
24 expiration of the additional use tax and the provisions in
25 connection therewith as imposed and provided by Enrolled
26 House Bill No. 481, enacted by the Legislature of West
27 Virginia, regular session, one thousand nine hundred
28 sixty-one, and the provisions of this section shall expire
29 on June thirtieth, one thousand nine hundred sixty-two.

RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 2

(By Messrs. White, Cann, Garrett and Zabeau)

[Adopted June 15, 1961.]

Expressing the sense of the Legislature of West Virginia in support of the finding of the United States Tariff Commission Escape Clause Investigation No. 7-101, dated May 17, 1961, pertaining to crown, cylinder and sheet glass.

WHEREAS, It is apparent to this Legislature that in many areas of our State there exists an emergency in relation to unemployment; and

WHEREAS, In Harrison and Kanawha Counties, four large sheet-glass plants are and have been operating at greatly reduced capacity, and with a reduced number of employees; and

WHEREAS, The United States Tariff Commission, on May 17, 1961, in connection with Escape Clause Investigation No. 7-101, unanimously found, after investigation, and reported to the President that sheet glass, such as produced in West Virginia, is being and has been imported into the United States in such increased quantities as to cause serious injury to the sheet-glass industry; and

WHEREAS, The Tariff Commission further recommended that the tariff on sheet glass be increased to rates set out in the report; and

WHEREAS, West Virginia produces more sheet glass than any other State; and

WHEREAS, The State of West Virginia is alert to take action that may increase employment and retain here industries traditionally a part of our economy, and to take all effective measures in support of such policy; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That it is the sense of this Legislature that the President of the United States can and should adopt and put into effect the findings of the United States Tariff Commission, dated May 17, 1961, in connection with Escape Clause Investigation No. 7-101.

HOUSE CONCURRENT RESOLUTION NO. 4

(By Mr. Speaker, Mr. Singleton)

[Adopted June 15, 1961.]

Authorizing compensation of members of the House of Delegates of the West Virginia Legislature appointed to fill unexpired terms.

WHEREAS, In the past, vacancies have occurred in the membership of the House of Delegates of the West Virginia Legislature due to death and resignation of members; and

WHEREAS, There has not been a uniform policy regarding the compensation to be paid to members who are appointed to fill unexpired terms; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That members appointed for any reason whatsoever to fill an unexpired term in the House of Delegates of the West Virginia Legislature at the first extraordinary session, 1961, commencing on June 14th, 1961, shall receive as compensation for services rendered the sum of thirty-five dollars per day for each and every day the Legislature is in session; and, be it

Further Resolved, That such compensation shall not exceed one thousand five hundred dollars for any one calendar year, together with the travel expense hereinabove authorized; and, be it

Further Resolved, That if any member appointed to fill an unexpired term shall serve for a full calendar year, then said member shall be compensated in the same manner as duly elected members are compensated; and, be it

Further Resolved, That in adopting this resolution and authorizing payment to members of the House of Delegates appointed to fill unexpired terms, the Legislature finds and declares that a moral obligation exists on the part of the State of West Virginia to compensate members appointed to fill unexpired terms for the services rendered by said members.

HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Seibert)

[Adopted June 16, 1961.]

Requesting the Joint Committee on Government and Finance to make a study of procedures and practices of the Division of Purchases of the Department of Finance and Administration and report to the Legislature thereon.

WHEREAS, Recently the press has carried a number of stories indicating that in several instances purchases by the Division of Purchases of the Department of Finance and Administration of commodities, supplies and equipment have not been made from the lowest bidder and in some instances purchases have been made without obtaining competitive bids; and

WHEREAS, The Attorney General of West Virginia has recently been quoted by the press as inviting the public to report on instances of irregularities in the conduct of the state government to the appropriate public officials in order that necessary steps may be taken to eliminate or correct any improper practices or procedures; and

WHEREAS, The Legislature hereby declares its willingness to cooperate with the Executive Department in the enactment of any legislation needed to safeguard the interests of the State in the purchasing of commodities, supplies and equipment; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance is hereby requested to immediately make a study of procedures and practices of the Division of Purchases of the Department of Finance and Administration in connection with purchases for the State and its agencies and of the law governing such purchases; and that said Committee report its findings and recommendations to the 1962 session of the Legislature; and, be it

Further Resolved, That any irregularities that may be discovered during the course of the study shall immediately be transmitted to the Honorable William Wallace Barron, Governor, for his information and appropriate action.

SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Moreland)

[Adopted June 16, 1961.]

Directing the Joint Committee on Government and Finance to conduct a study of the West Virginia Merit System Council in regard to its policies, procedures; and, especially, the method used in arriving at various job specifications for the qualification of applicants.

WHEREAS, The Legislature by Chapter 108, Acts of the Legislature of West Virginia, one thousand nine hundred forty-seven, created a Merit System Council with powers, among others, to establish policies for the administration of the merit system; and

WHEREAS, It appears that in many cases, prerequisites by way of education or training are such that few applicants are eligible to apply for such jobs; and

WHEREAS, It appears that little, if any, consideration is given to the available pay for such job positions at the time the specifications and requirements for education and work training are established, so that people who do meet the specified requirements are not willing to work at the available pay rate; and

WHEREAS, The Legislature in regular session, one thousand nine hundred sixty-one, established a West Virginia Civil Service Commission to supersede the Merit System Council; and

WHEREAS, In order that such commission shall not continue what appears possibly to be impractical policies; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance be hereby directed to make a thorough study and investigation of the merit system in order to determine the soundness and reasonableness of its policies, practices and procedures in view of the particular circumstances prevailing in the State of West Virginia. The committee shall make such a report to the members of the Legislature from time to time as it deems advisable and shall, before convening of the Legislature, regular session,

one thousand nine hundred sixty-two, make an interim report to the members of the Legislature embracing its findings and recommendations at that time.

On or before the date of the convening of the Legislature, regular session, one thousand nine hundred sixty-two, the committee shall make a final report to the members of the Legislature; and shall include in such report such findings and recommendations as it deems pertinent, including drafts of any such proposed legislation that will be necessary to carry the recommendations of the committee into effect.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1962

REGULAR SESSION

CHAPTER 1

(Com. Sub. for House Bill No. 1—Originating in the
House Committee on Finance)

[Passed February 10, 1962; in effect from passage.]

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.

Section

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

Section 1. General Policy.—The purpose of this act 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 sixty-three.

Sec. 2. Definitions.—For the purpose of this act:

2 “Board” shall mean the board of public works;

3 “Spending Unit” shall mean the department, agency or
4 institution to which an appropriation is made;

5 The “fiscal year” one thousand nine hundred sixty-three
6 shall mean the period from July first, one thousand nine
7 hundred sixty-two through June thirtieth, one thousand
8 nine hundred sixty-three;

9 “From collections” shall mean that part of the total ap-
10 propriation which must be collected by the spending unit
11 to be available for expenditure. If the authorized amount
12 of collections is not collected, the total appropriation for
13 the spending unit shall be reduced automatically by the
14 amount of the deficiency in the collection. If the amount
15 collected exceeds the amount designated “from collec-
16 tions,” the excess shall be set aside in a special surplus
17 fund and may be expended for the purpose of the spending
18 unit as provided by chapter one hundred thirty-two, acts
19 of the Legislature, regular session, one thousand nine hun-
20 dred sixty-one.

Sec. 3. Classification of Appropriations.—An appropria-
2 tion for:

3 “Personal services” shall be expended only for the pay-
4 ment of salaries, wages, fees, and other compensation for
5 skill, work, or employment;

6 Unless otherwise specified, appropriations for personal
7 services shall include salaries of heads of spending unit;

8 “Current expenses” shall be expended only for operating
9 cost other than personal services or capital outlay;

10 “Repairs and alterations” shall include all expenditures
11 for materials, supplies and labor used in repairing and
12 altering buildings, grounds and equipment, other than per-
13 sonal service;

14 “Equipment” shall be expended only for things which
15 have an appreciable and calculable period of usefulness in
16 excess of one year;

17 “Buildings” shall include construction and alteration of
18 structures and the improvements of lands, sewer and water
19 improvements, and shall include shelter, support, storage,
20 protection, or the improvement of a natural condition;

- 21 "Lands" shall be expended only for the purchase of lands
 22 or interest in lands.
 23 Appropriations otherwise classified shall be expended
 24 only where the distribution of expenditures for different
 25 purposes cannot well be determined in advance or it is
 26 necessary or desirable to permit the spending unit freedom
 27 to spend an appropriation for more than one of the above
 28 purposes.

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 article three, chapter twelve of the code of West Virginia,
 5 one thousand nine hundred thirty-one, or according to any
 6 law detailing a procedure specifically limiting that article.

Title 2. Appropriations.

Section

1. Appropriations from general revenue.

AGRICULTURE

Department of agriculture—Acct. No. 510	1020
Department of agriculture (agricultural awards)—Acct. No. 515	1021
Department of agriculture (marketing and research)— Acct. No. 513	1021
Department of agriculture (soil conservation committee)— Acct. No. 512	1020

BUSINESS AND INDUSTRIAL RELATIONS

Bureau of labor and department of weights and measures— Acct. No. 450	1017
Commission on interstate cooperation—Acct. No. 472	1018
Department of banking—Acct. No. 480	1019
Department of commerce—Acct. No. 465	1017
Department of mines—Acct. No. 460	1017
Interstate commission on Potomac river basin—Acct. No. 473	1018
Ohio river valley water sanitation commission—Acct. No. 474	1018
Southern regional education board—Acct. No. 475	1018
West Virginia air pollution commission—Acct. No. 476	1018
West Virginia centennial commission—Acct. No. 487	1019
West Virginia historic commission—Acct. No. 477	1019
West Virginia nonintoxicating beer commissioner— Acct. No. 490	1019
West Virginia racing commission—Acct. No. 495	1020, 1042
West Virginia state aeronautics commission—Acct. No. 485	1019

CHARITIES AND CORRECTION

Andrew S. Rowan memorial home—Acct. No. 384	1012
Forestry camp for boys—Acct. No. 371	1011
Medium security prison—Acct. No. 376	1012
West Virginia children's home—Acct. No. 380	1012
West Virginia industrial home for girls—Acct. No. 372	1011, 1042
West Virginia industrial school for boys—Acct. No. 370	1010, 1041

West Virginia penitentiary—Acct. No. 375	1011
West Virginia state prison for women—Acct. No. 374	1011

CONSERVATION AND DEVELOPMENT

Department of veterans affairs—Acct. No. 564	1022
Geological and economic survey commission—Acct. No. 520	1021
Natural resources commission—Acct. No. 565	1023
Natural resources commission (forest tree nursery facilities)—Acct. No. 521	1022

EDUCATIONAL

Archives and history—Acct. No. 340	1010
Bluefield state college—Acct. No. 329	1009
Concord college—Acct. No. 325	1008
Department of education (aid for exceptional children)—Acct. No. 296	1005
Department of education (textbook aid)—Acct. No. 297	1005
Fairmont state college—Acct. No. 321	1007
FFA-FHA camp and conference center—Acct. No. 336	1010
Glenville state college—Acct. No. 322	1007
Marshall university—Acct. No. 320	1007
Shepherd college—Acct. No. 324	1007
State board of education (vocational division)—Acct. No. 294	1004
State board of school finance (state aid to schools)—Acct. No. 295	1004
Teachers retirement board—Acct. No. 298	1006
West Liberty state college—Acct. No. 323	1007
West Virginia institute of technology—Acct. No. 327	1008
West Virginia library commission—Acct. No. 350	1010
West Virginia schools for the deaf and blind—Acct. No. 333	1009
West Virginia state college—Acct. No. 328	1009
West Virginia state college (4-H camp)—Acct. No. 330	1009
West Virginia university—Acct. No. 300	1006
West Virginia university (Potomac state college)—Acct. No. 315	1006

EXECUTIVE

Board of probation and parole—Acct. No. 123	1000
Governor's office—Acct. No. 120	1000

FISCAL

Auditor's office (general administration)—Acct. No. 150	1000
Board of public works—Acct. No. 220	1003
Department of finance and administration—Acct. No. 210	1002, 1041
Sinking fund commission—Acct. No. 170	1001
State board of insurance—Acct. No. 225	1003
State commissioner of public institutions—Acct. No. 190	1002
State tax commissioner—Acct. No. 180	1001
State tax commissioner (property appraisal)—Acct. No. 185	1002
Treasurer's office—Acct. No. 160	1001

INCORPORATING AND RECORDING

Secretary of state—Acct. No. 250	1004
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LEGAL

Attorney general—Acct. No. 240	1003
Commission on uniform state laws—Acct. No. 245	1004

HEALTH AND WELFARE

Barboursville state hospital—Acct. No. 424	1015
Berkeley Springs sanitarium—Acct. No. 436	1016
Denmar state hospital—Acct. No. 432	1016

Department of mental health—Acct. No. 410	1014
Department of veterans affairs—Acct. No. 404	1013
Department of welfare—Acct. No. 405	1013
Fairmont emergency hospital—Acct. No. 425	1015
Hopemont sanitarium—Acct. No. 430	1016
Huntington state hospital—Acct. No. 422	1014
Lakin state hospital—Acct. No. 423	1015
Pinecrest sanitarium—Acct. No. 431	1016
Spencer state hospital—Acct. No. 421	1014
State board of education (rehabilitation division)—Acct. No. 440	1017
State health department—Acct. No. 400	1012
Welch emergency hospital—Acct. No. 426	1015
Weston state hospital—Acct. No. 420	1014
West Virginia training school—Acct. No. 419	1014, 1042

JUDICIAL

Auditor's office—Acct. No. 111	999
Judicial council—Acct. No. 118	1000
State law library—Acct. No. 114	999
Supreme court of appeals—Acct. No. 110	999

LEGISLATIVE

House of Delegates—Acct. No. 102	996
Joint expenses—Acct. No. 103	998
Senate—Acct. No. 101	995

MISCELLANEOUS BOARDS AND COMMISSIONS

Board of accountancy—Acct. No. 586	1025
Board of architects—Acct. No. 595	1026
Board of dental examiners—Acct. No. 589	1025
Board of embalmers and funeral directors—Acct. No. 593	1026
Board of examiners for practical nurses—Acct. No. 587	1025
Board of examiners for registered nurses—Acct. No. 588	1025
Board of law examiners—Acct. No. 597	1027
Board of optometry—Acct. No. 592	1026
Board of osteopathy—Acct. No. 591	1026
Board of pharmacy—Acct. No. 590	1025
Board of registration for professional engineers—Acct. No. 594	1026
Board of sanitarians—Acct. No. 599	1027
Board of veterinarians—Acct. No. 596	1026
Human rights commission—Acct. No. 598	1027
State road commission—Acct. No. 641	1028
West Virginia public employees' retirement board—Acct. No. 614	1027

PROTECTION

Adjutant general (state militia)—Acct. No. 580	1023
Auditor's office (social security)—Acct. No. 582	1024
Commissioner of public institutions (insurance)—Acct. No. 585	1025
Department of civil and defense mobilization—Acct. No. 581	1024
Department of public safety—Acct. No. 570	1023
State board of education (insurance)—Acct. No. 584	1024

2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 812	1033
Department of agriculture—Acct. No. 818	1034
Department of employment security (federal)—Acct. No. 825	1035
Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814	1033

Department of labor (bedding division)—Acct. No. 843	1039
Department of public safety—(inspection fees)—Acct. No. 835	1038
Insurance commissioner—Acct. No. 826	1035
Insurance commissioner (fire marshal)—Acct. No. 827	1035, 1042
Natural resources commission—Acct. No. 830	1037
Public service commission—Acct. No. 828	1036
Public service commission (motor carrier division)—Acct. No. 829	1036
Real estate commission—Acct. No. 801	1032
State board of education (special capital improvement fund)— Acct. No. 854	1040
State committee of barbers and beauticians—Acct. No. 822	1034
West Virginia civil service system—Acct. No. 840	1039
West Virginia liquor control commissioner—Acct. No. 837	1038
West Virginia racing commission—Acct. No. 808	1032
West Virginia university (special capital improvement fund)— Acct. No. 853	1040

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671	1029, 1042
State road commission (general administration and engineering)— Acct. No. 670	1028
State tax commissioner (gasoline tax division)—Acct. No. 672	1029

PAYABLE FROM GENERAL SCHOOL FUND

Department of education—Acct. No. 703	1030, 1042
Department of education (salaries of county superintendents)— Acct. No. 706	1031
Department of education (scholarships for teacher training)— Acct. No. 715	1032
Department of education (school lunch program) Acct. No. 705	1031
Department of education (state aid to children's homes)— Acct. No. 707	1032
Department of education (veterans education)—Acct. No. 702	1030
State board of education—Acct. No. 700	1029
State board of education (vocational division)—Acct. No. 701	1030
State board of school finance—Acct. No. 704	1031
State tax commissioner (store and general licenses division)— Acct. No. 712	1032

PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 900	1041
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3. Supplemental and deficiency appropriations.
4. Awards for claims against the state.
5. Appropriations for emergency relief of unemployment.
6. Appropriations from surplus revenues.
7. Special revenue appropriations.
8. Specific funds and collection accounts.
9. Appropriations for refunding erroneous payments.
10. Sinking fund deficiencies.
11. Appropriations from taxes and license fees.
12. Appropriations to pay costs of publication of delinquent corporations.
13. Appropriations for local governments.
14. Total appropriations.
15. General school fund.

Section 1. Appropriations from General Revenue.—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred sixty-one, the following amounts, as itemized for expenditures during the fiscal year one thousand nine hundred sixty-three.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1962-63
1 Salaries of Members.....\$	48,000.00
2 Compensation and per diem of officers and	
3 attaches	95,000.00
4 Mileage of Members.....	2,800.00
5 Current Expenses and Contingent Fund.....	100,000.00
6 To pay Clerk of the Senate for compiling	
7 and publishing the West Virginia Blue	
8 Book, the distribution of which shall be	
9 made by the Office of the Clerk of the	
10 Senate and shall include seventy-five	
11 copies for each member of the Legislature	
12 and two copies to each classified and ap-	
13 proved High and Junior High School and	
14 one to each Elementary School within the	
15 State	10,000.00
16 To pay cost of printing the 1962 edition of	
17 Blue Book	46,000.00
18 Drafting service	8,000.00
19 The appropriations for the Senate for the	
20 fiscal year 1961-62 are to remain in full	
21 force and effect, and are hereby reappro-	
22 priated to June 30, 1963.	

23 Any balances so reappropriated may be
 24 transferred and credited to the 1962-63 ac-
 25 counts.
 26 Upon the written request of the Clerk of
 27 the Senate the State Auditor shall trans-
 28 fer amounts between items of the total
 29 appropriation in order to protect or in-
 30 crease the efficiency of the service.
 31 The Clerk of the Senate is authorized to
 32 draw his requisitions upon the Auditor,
 33 payable out of the contingent fund of the
 34 Senate, for any bills for supplies and
 35 services that may have been incurred by
 36 the Senate and not included in the appro-
 37 priation bill, and for bills for supplies and
 38 services incurred after adjournment, and
 39 for the necessary operation of the Senate
 40 offices, the requisition for same to be ac-
 41 companied by the bills to be filed with
 42 the Auditor.

2—House of Delegates

Acct. No. 102

1 Salaries of Members.....	\$	150,000.00
2 Compensation and per diem of officers and		
3 attaches		135,000.00
4 Mileage of Members.....		5,000.00
5 Current Expenses and Contingent Fund		95,000.00
6 Drafting Service		5,000.00
7 An amount, not to exceed \$3,600.00 per year,		
8 is hereby authorized to be expended from		
9 the contingent fund of the House of Dele-		
10 gates for janitor services, etc.		
11 The House Committee on Rules, with the		
12 approval of the Speaker, is hereby au-		
13 thorized to expend from the House Con-		
14 tingent Fund for the fiscal year 1962-63 an		
15 amount, not to exceed the sum of Thirteen		
16 Thousand (\$13,000.00) Dollars, for the pur-		
17 pose of carpeting the House Chamber and		

18 altering the electrical wiring for the roll
19 call and public address systems in said
20 Chamber in the main unit of the Capitol
21 Building. The appropriations for the
22 House of Delegates for the fiscal year 1961-
23 62 are to remain in full force and effect,
24 and are hereby reappropriated to June 30,
25 1963.

26 Any balances so reappropriated may be trans-
27 ferred and credited to the 1962-63 accounts.

28 Upon the written request of the Clerk of the
29 House of Delegates the State Auditor shall
30 transfer amounts between items of the
31 total appropriation in order to protect or
32 increase the efficiency of the service.

33 The Clerk of the House of Delegates, with
34 approval of the Speaker, is authorized to
35 draw his requisitions upon the Auditor,
36 payable out of the contingent fund of the
37 House of Delegates, for any bills for sup-
38 plies and services that may have been in-
39 curred by the House of Delegates, and not
40 included in the appropriation bill, for
41 bills for services and supplies incurred in
42 preparation for the opening of the session
43 and after adjournment, and for the neces-
44 sary operation of the House of Delegates
45 offices, the requisition for same to be ac-
46 companied by bills to be filed with the
47 Auditor.

48 For duties imposed by law and by the House
49 of Delegates, including the salary allowed
50 by law as keeper of the rolls, the Clerk of
51 the House of Delegates shall be paid a
52 salary of \$925.00 per month, payable from
53 the contingent fund of the House of Dele-
54 gates, and the Clerk may employ a secre-
55 tary and a clerk at a salary not to exceed
56 \$375.00 per month each, payable monthly
57 from the same fund.

3—*Joint Expenses*

Acct. No. 103

1 To pay the cost of legislative printing and	
2 stationery	\$ 125,000.00
3 Commission on Interstate Cooperation.....	15,000.00
4 Joint Committee on Government and Fi-	
5 nance	240,000.00
6 Other Authorized Legislative Committees	30,000.00
7 The appropriations for Joint Expenses for	
8 the fiscal year 1961-62 are to remain in	
9 full force and effect, and are hereby re-	
10 appropriated to June 30, 1963.	
11 Any balances so reappropriated may be	
12 transferred and credited to the 1962-63	
13 accounts.	
14 Upon the written request of the Clerk of the	
15 Senate and the Clerk of the House of	
16 Delegates the State Auditor shall transfer	
17 amounts between items of the total appro-	
18 priation in order to protect or increase	
19 the efficiency of the service.	
20 Upon the written request of the Clerk of the	
21 Senate and the Clerk of the House of Dele-	
22 gates, the State Auditor shall transfer	
23 from the 1961-62 appropriations for "Joint	
24 Committee on Government and Finance"	
25 the sum of \$25,000.00 to Account 101,	
26 "Current Expenses and Contingent Fund."	
27 Upon the written request of the Clerk of	
28 the Senate and the Clerk of the House of	
29 Delegates, the State Auditor shall transfer	
30 from Account No. 103, of the 1961-62 Ap-	
31 propriation to the "Joint Committee on	
32 Government and Finance," the sum of	
33 \$48,000.00 to Acct. No. 510—Department of	
34 Agriculture for Emergency Seed Program.	

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges.....	\$	87,500.00
2	Other Personal Services.....		113,900.00
3	Current Expenses.....		22,000.00
4	Equipment		2,500.00
5	Total.....	\$	225,900.00

5—*Judicial—Auditor's Office*

Acct. No. 111

1	Salaries of Judges.....	\$	345,000.00
2	Other Personal Services.....		81,000.00
3	Current Expenses.....		26,000.00
4	Judges' Retirement System		25,000.00
5	Criminal Charges		300,000.00
6	Total.....	\$	777,000.00
7	This appropriation shall be administered by		
8	the State Auditor who shall draw his re-		
9	quisition for warrants in payment of sal-		
10	aries in the form of payrolls, making de-		
11	ductions therefrom as required by law, for		
12	taxes and other items. The appropriation		
13	for Judges' Retirement System is to be		
14	transferred to the Judges' Retirement		
15	Fund, in accordance with the law relating		
16	thereto, upon requisition of the State		
17	Auditor.		

6—*State Law Library*

Acct. No. 114

1	Personal Services	\$	22,180.00
2	Current Expenses.....		2,000.00
3	Equipment		14,500.00
4	Total.....	\$	38,680.00

7—*Judicial Council*

Acct. No. 118

1 To pay expenses of Members of the council..\$	12,000.00
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EXECUTIVE

8—*Governor's Office*

Acct. No. 120

1 Salary of Governor.....\$	17,500.00
2 Other Personal Services.....	63,747.00
3 Current Expenses.....	15,000.00
4 Equipment	1,500.00
5 Civil Contingent Fund.....	160,000.00
6 Of this appropriation there may be expend-	
7 ed, at the discretion of the Governor, an	
8 amount not to exceed \$1,000.00 as West	
9 Virginia's contribution to the Interstate	
10 Oil Compact Commission.	
11 Custodial Fund	50,000.00
12 To be used for current general expenses,	
13 including compensation of servants and	
14 employees, household maintenance, cost of	
15 official functions, and any additional	
16 household expenses occasioned by such	
17 official functions.	
18 Total.....\$	307,747.00

9—*Board of Probation and Parole*

Acct. No. 123

1 Personal Services	\$ 189,960.00
2 Current Expenses	80,210.00
3 Equipment	2,000.00
4 Total.....\$	272,170.00

FISCAL

10—*Auditor's Office—General Administration*

Acct. No. 150

1 Salary of State Auditor.....\$	11,000.00
2 Other Personal Services.....	326,880.00

3	Current Expenses.....	92,655.00
4	Equipment	15,000.00
5	Total.....	\$ 445,535.00

11—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer.....	\$ 11,000.00
2	Other Personal Services.....	106,200.00
3	Current Expenses	16,500.00
4	Equipment	10,000.00
5	Total.....	\$ 143,700.00

12—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services.....	\$ 19,800.00
2	Current Expenses.....	1,500.00
3	Total.....	\$ 21,300.00

13—*State Tax Commissioner*

Acct. No. 180

1	Personal Services	\$ 1,006,830.00
2	Current Expenses	310,100.00
3	Equipment	23,000.00
4	Administration, Enforcement and Collection	
5	under the West Virginia Personal Income	
6	Tax Law (Senate Bill No. 106—1961 Legis-	
7	lature)	400,000.00
8	Total.....	\$ 1,739,930.00
9	Any unexpended balance remaining in the	
10	appropriation "Administration, Enforce-	
11	ment and Collection under the West Vir-	
12	ginia Personal Income Tax Law (Senate	
13	Bill No. 106—1961 Legislature)" at the	
14	end of the 1961-62 fiscal year is hereby re-	

- 15 appropriated for expenditure during the
16 1962-63 fiscal year.

14—*State Tax Commissioner*

Acct. No. 185

1	Property Appraisal	\$	1,937,042.00
2	Any balance remaining in the appropriation		
3	“Property Appraisal” at the close of the		
4	fiscal year 1961-62 is hereby reappropriated		
5	for expenditure during the fiscal year		
6	1962-63.		

15—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner	\$	10,000.00
2	Other Personal Services		46,920.00
3	Current Expenses		11,275.00
4	Equipment		1,100.00
5	Total	\$	69,295.00

16—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services	\$	482,890.00
2	Current Expenses		140,320.00
3	Repairs and Alterations		51,900.00
4	Equipment		19,000.00
5	Postage		90,000.00
6	Records Management		10,000.00
7	Emergency and Economic Stabilization		10,000.00
8	Total	\$	804,110.00
9	The Workmen's Compensation Commission,		
10	Department of Public Assistance, Public		
11	Service Commission, Natural Resources		
12	Commission, Department of Motor Ve-		
13	hicles, State Road Commissioner and State		
14	Health Department shall reimburse the		
15	Postage appropriation of the Department		

16 of Finance and Administration monthly
 17 for all meter service. Any spending unit
 18 receiving reimbursement for postage costs
 19 from the Federal Government shall re-
 20 fund to the Postage Account of the Depart-
 21 ment of Finance and Administration such
 22 amounts. Should this appropriation for
 23 Postage be insufficient to meet the mailing
 24 requirements of the state spending units
 25 as set out above, any excess postage meter
 26 service requirements shall be a proper
 27 charge against the units, and each spend-
 28 ing unit shall refund to the Postage appro-
 29 priation of the Department of Finance and
 30 Administration any amounts required for
 31 that Department for postage in excess of
 32 this appropriation.

33 Any unexpended balance remaining in the
 34 Postage Account at the close of the fiscal
 35 year 1961-62 is hereby reappropriated for
 36 expenditure during the fiscal year 1962-63.

17—*The Board of Public Works*

Acct. No. 220

1	Contingent Fund	\$	50,000.00
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18—*State Board of Insurance*

Acct. No. 225

1	Personal Services	\$	5,000.00
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2	Current Expenses		2,200.00
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3	Total	\$	7,200.00
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LEGAL

19—*Attorney General*

Acct. No. 240

1	Salary of Attorney General	\$	12,000.00
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2	Other Personal Services		167,840.00
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3	Current Expenses		19,000.00
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4	Equipment	9,500.00
5	To protect the resources or tax structure of	
6	the State in controversies or legal pro-	
7	ceedings affecting same	4,000.00
8	Total	\$ 212,340.00

20—*Commission on Uniform State Laws*

Acct. No. 245

1	Total	\$ 3,150.00
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INCORPORATING AND RECORDING

21—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$ 11,000.00
2	Other Personal Services	62,640.00
3	Current Expenses	13,000.00
4	Equipment	3,300.00
5	Total	\$ 89,940.00

EDUCATIONAL

22—*State Board of Education—Vocational Division*

Acct. No. 294

1	Total	\$ 500,000.00
2	To be transferred to General School Fund	
3	(Acct. No. 701) and be administered in ac-	
4	cordance with provisions of House Bill No.	
5	7—1960 Legislature.	
6	Any unexpended balance remaining in this	
7	account (294) at the close of the fiscal year	
8	1961-62 is hereby reappropriated for ex-	
9	penditure during the fiscal year 1962-63.	

23—*State Board of School Finance—State Aid to Schools*

Acct. No. 295

1	State aid to supplement the General School	
2	Fund	\$ 58,075,585.00
3	Reimbursement to counties which suffer re-	
4	ductions in state aid formula allocations	

5	for instruction as a result of participation	
6	in experimental programs approved by	
7	the State Board of Education	15,000.00
8	State Aid to Supplement the General School	
9	Fund—allocation for increased enrollment	300,000.00
10	To the Board of Education of Morgan Coun-	
11	ty for funds lost as a result of an error	
12	in the appraisal report of the Tax Com-	
13	missioner for the year 1961, in addition to	
14	its regular state aid	8,740.00
15	Total	\$ 58,399,325.00
16	To be transferred to the General School	
17	Fund upon the requisition of the Governor.	
18	Until the property reappraisal is completed	
19	in all counties, the computed local share	
20	in any county, for the final determination	
21	of state aid, shall not be increased or de-	
22	creased more than five per cent in any one	
23	year. With the exception of this limita-	
24	tion, provisions of article nine-a, chapter	
25	eighteen of the Code shall in no way be	
26	affected.	

24—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

1	Personal Services	\$ 14,000.00
2	Current Expenses	4,000.00
3	Out-of-State Instruction	30,000.00
4	Aid to Counties	208,500.00
5	Total	\$ 256,500.00
6	The appropriation for "Out-of-State Instruc-	
7	tion" may be expended to provide instruc-	
8	tion, care and maintenance for educable	
9	persons who have multiple handicaps and	
10	for whom the state provides no facilities.	

25—*Department of Education—Textbook Aid*

Acct. No. 297

1	Textbooks for Schools	\$ 150,000.00
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- 2 To be distributed according to chapter fifty-
 3 one, acts of the Legislature, regular ses-
 4 sion, 1939.

26—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired Teachers	\$ 2,405,974.00
2	Employers' Accumulation Fund—To match	
3	contributions of members	3,344,000.00
4	Expense Fund	33,304.00
5	Total	\$ 5,783,278.00

27—*West Virginia University*

Acct. No. 300

1	Personal Services	\$ 8,217,126.00
2	Current Expenses	1,232,000.00
3	Repairs and Alterations	400,000.00
4	Equipment	533,000.00
5	Oak Wilt Control Research	10,000.00
6	State Aid to Students of Veterinary Medicine	48,000.00
7	Institute for Planning and Research	50,000.00
8	Bureau for Coal Research	60,000.00
9	Total	\$ 10,550,126.00
10	Out of the above appropriation for Personal	
11	Services, the sum of \$8,500.00 shall be used	
12	only for the employment of a Spray Spe-	
13	cialist who shall be stationed only at West	
14	Virginia University Farm at Kearneys-	
15	ville, and \$7,200.00 for the employment of	
16	a Labor Specialist.	

28—*Potomac State College of West Virginia University*

Acct. No. 315

1	Personal Services	\$ 380,750.00
2	Current Expenses	59,160.00
3	Repairs and Alterations	36,300.00
4	Equipment	35,046.00
5	Total	\$ 511,256.00

29—*Marshall University*

Acct. No. 320

1	Personal Services.....	\$	2,338,180.00
2	Current Expenses.....		240,433.00
3	Repairs and Alterations.....		67,122.00
4	Equipment		97,515.00
5	Flood Wall Assessment		3,200.00
6	Completing Third Floor of the Library.....		60,000.00
7	Experimental Projects Approved by the		
8	State Board of Education.....		15,000.00
<hr/>			
9	Total.....	\$	2,821,450.00

30—*Fairmont State College*

Acct. No. 321

1	Personal Services.....	\$	761,379.00
2	Current Expenses.....		86,665.00
3	Repairs and Alterations.....		33,264.00
4	Equipment		40,095.00
<hr/>			
5	Total.....	\$	921,403.00

31—*Glenville State College*

Acct. No. 322

1	Personal Services.....	\$	487,867.00
2	Current Expenses.....		68,274.00
3	Repairs and Alterations.....		43,090.00
4	Equipment		28,116.00
5	Rural Education Development Program		10,000.00
6	Purchase of Land		12,500.00
<hr/>			
7	Total.....	\$	649,847.00

32—*West Liberty State College*

Acct. No. 323

1	Personal Services.....	\$	587,293.00
2	Current Expenses.....		82,665.00
3	Repairs and Alterations.....		41,505.00

4	Equipment	39,204.00
5	Total	\$ 750,667.00

33—*Shepherd College*

Acct. No. 324

1	Personal Services	\$ 486,615.00
2	Current Expenses	64,548.00
3	Repairs and Alterations	29,452.00
4	Equipment	25,987.00
5	Purchase of Land	5,000.00
6	Total	\$ 611,602.00

34—*Concord College*

Acct. No. 325

1	Personal Services	\$ 897,062.00
2	Current Expenses	95,802.00
3	Repairs and Alterations	17,126.00
4	Equipment	44,550.00
5	Books	24,600.00
6	Total	\$ 1,079,140.00
7	Any unexpended balance remaining in the	
8	appropriation for "Dormitory Equipment"	
9	at the close of the fiscal year 1959-60	
10	and reappropriated for expenditure during	
11	the fiscal year 1960-61 and the fiscal year	
12	1961-62 is hereby reappropriated for ex-	
13	penditure for Dormitory Equipment, Stu-	
14	dent Center Equipment, or Administra-	
15	tion-Classroom Building Equipment dur-	
16	ing the fiscal year 1962-63.	

35—*West Virginia Institute of Technology*

Acct. No. 327

1	Personal Services	\$ 678,571.00
2	Current Expenses	81,672.00
3	Repairs and Alterations	43,906.00
4	Equipment	78,685.00

5	Purchase of Land.....	30,000.00
6	Total.....	\$ 912,834.00

36—West Virginia State College**Acct. No. 328**

1	Personal Services.....	\$ 1,071,715.00
2	Current Expenses.....	151,470.00
3	Repairs and Alterations.....	82,605.00
4	Equipment	52,698.00
5	Total.....	\$ 1,358,488.00

37—Bluefield State College**Acct. No. 329**

1	Personal Services.....	\$ 390,446.00
2	Current Expenses.....	61,408.00
3	Repairs and Alterations.....	43,806.00
4	Equipment	46,134.00
5	Training Development Center.....	15,000.00
6	Renovation of Boys' Dormitory.....	20,000.00
7	Total.....	\$ 576,794.00

38—West Virginia State College—4-H Camp**Acct. No. 330**

1	Personal Services.....	\$ 13,320.00
2	Current Expenses	4,860.00
3	Repairs and Alterations.....	6,160.00
4	Equipment	1,950.00
5	Total.....	\$ 26,290.00

39—West Virginia Schools for the Deaf and Blind**Acct. No. 333**

1	Personal Services	\$ 473,159.00
2	Current Expenses	160,330.00
3	Repairs and Alterations.....	40,700.00

4	Equipment	19,850.00
5	Total	\$ 694,039.00

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

Acct. No. 336

1	Personal Services	\$ 24,800.00
2	Current Expenses	6,800.00
3	Repairs and Alterations	5,550.00
4	Equipment	8,500.00
5	Total	\$ 45,650.00

41—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$ 32,190.00
2	Current Expenses	6,351.00
3	Equipment	8,000.00
4	Total	\$ 46,541.00

42—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$ 81,000.00
2	Current Expenses	5,000.00
3	Equipment	1,000.00
4	Books and Periodicals	30,000.00
5	Library Services for the Blind	5,000.00
6	Total	\$ 122,000.00

CHARITIES AND CORRECTION

43—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$ 227,508.00
2	Current Expenses	114,250.00
3	Repairs and Alterations	49,200.00
4	Equipment	17,250.00

5	New Boilers—Shop and Dining Hall.....	25,000.00
6	Total.....	\$ 433,208.00

44—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$ 51,520.00
2	Current Expenses	68,310.00
3	Repairs and Alterations	6,600.00
4	Equipment	4,800.00
5	Total	\$ 131,230.00

45—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$ 115,805.00
2	Current Expenses	68,445.00
3	Repairs and Alterations	10,350.00
4	Equipment	7,450.00
5	Vocational Training	5,000.00
6	Total	\$ 207,050.00

46—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$ 37,420.00
2	Current Expenses	31,390.00
3	Repairs and Alterations	11,050.00
4	Equipment	1,400.00
5	Total	\$ 81,260.00

47—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services	\$ 603,780.00
2	Current Expenses	483,200.00
3	Repairs and Alterations	34,000.00
4	Equipment	17,700.00
5	Smoke Control	35,000.00
6	Total	\$ 1,173,680.00

48—*Medium Security Prison*

Acct. No. 376

1	Personal Services	\$	284,017.00
2	Current Expenses		150,804.00
3	Repairs and Alterations		15,000.00
4	Equipment		11,300.00
5	Reroofing Main Building		25,000.00
6	Total	\$	486,121.00

49—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	44,820.00
2	Current Expenses		35,175.00
3	Repairs and Alterations		6,300.00
4	Equipment		6,700.00
5	Total	\$	92,995.00

50—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$	175,920.00
2	Current Expenses		154,186.00
3	Repairs and Alterations		23,400.00
4	Equipment		8,275.00
5	Total	\$	361,781.00

HEALTH AND WELFARE

51—*State Health Department*

Acct. No. 400

1	Personal Services	\$	396,340.00
2	Current Expenses		74,833.00
3	Equipment		4,500.00
4	Cancer Control and Treatment		100,000.00
5	Tuberculosis Field Clinic and Nursing Service		10,580.00
6	Out-Patient Pneumothorax Treatment		20,000.00

7 Local Health Services 450,000.00

8 Total\$ 1,056,253.00

52—Department of Veterans' Affairs

Acct. No. 404

1 Personal Services\$ 164,300.00

2 Current Expenses 44,730.00

3 Equipment 2,000.00

4 To provide Educational Opportunities for
5 Children of War Veterans as provided by
6 Chapter thirty-nine, acts of the Legisla-
7 ture, 1943\$ 15,000.00

8 Total\$ 226,030.00

9 Any unexpended balance remaining in the
10 appropriation "To Provide Educational Op-
11 portunities for Children of War Veterans"
12 at the close of the fiscal year 1961-62 is
13 hereby reappropriated for expenditure
14 during the fiscal year 1962-63.

53—Department of Welfare

Acct. No. 405

1 Personal Services\$ 2,000,000.00

2 Current Expenses 460,000.00

3 Equipment 34,290.00

4 Public Assistance Grants (Classified Aid) 7,068,000.00

5 Aid to Crippled Children 300,000.00

6 Medical Services 785,000.00

7 Medical Aid to the Aged 1,300,000.00

8 Conservation of Vision and Prevention of
9 Blindness 40,000.00

10 Child Welfare Services 113,000.00

11 General Relief 125,000.00

12 Boarding Care 340,000.00

13 Social Security Matching Fund 58,000.00

14 Total\$ 12,623,290.00

54—*Department of Mental Health*

Acct. No. 410

1	Personal Services	\$	203,180.00
2	Current Expenses		28,435.00
3	Equipment		4,400.00
4	Research and Training		25,000.00
5	Civil Service Costs		36,470.00
6	Total	\$	297,485.00

55—*West Virginia Training School*

Acct. No. 419

1	Personal Services	\$	439,210.00
2	Current Expenses		181,015.00
3	Repairs and Alterations		43,050.00
4	Equipment		17,700.00
5	Total	\$	680,975.00

56—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$	1,483,647.00
2	Current Expenses		748,993.00
3	Repairs and Alterations		46,498.00
4	Equipment		24,750.00
5	Total	\$	2,303,888.00

57—*Spencer State Hospital*

Acct. No. 421

1	Personal Services	\$	707,140.00
2	Current Expenses		382,320.00
3	Repairs and Alterations		48,900.00
4	Equipment		22,300.00
5	Total	\$	1,160,660.00

58—*Huntington State Hospital*

Act. No. 422

1	Personal Services	\$	1,134,240.00
2	Current Expenses		604,994.00

3	Repairs and Alterations.....	41,900.00
4	Equipment	38,100.00
5	Total.....	\$ 1,819,234.00

59—*Lakin State Hospital*

Acct. No. 423

1	Personal Services	\$ 412,836.00
2	Current Expenses	198,990.00
3	Repairs and Alterations.....	44,325.00
4	Equipment	47,100.00
5	Total.....	\$ 703,251.00

60—*Barboursville State Hospital*

Acct. No. 424

1	Personal Services	\$ 311,829.00
2	Current Expenses	130,426.00
3	Repairs and Alterations.....	29,000.00
4	Equipment	5,500.00
5	Total.....	\$ 476,755.00

61—*Fairmont Emergency Hospital*

Acct. No. 425

1	Personal Services	\$ 113,185.00
2	Current Expenses	70,445.00
3	Repairs and Alterations.....	8,300.00
4	Equipment	6,300.00
5	Total.....	\$ 198,230.00

62—*Welch Emergency Hospital*

Acct. No. 426

1	Personal Services	\$ 141,670.00
2	Current Expenses	130,000.00
3	Repairs and Alterations.....	40,000.00
4	Equipment	17,000.00
5	Total.....	\$ 328,670.00

63—Hopemont Sanitarium**Acct. No. 430**

1	Personal Services	\$	385,020.00
2	Current Expenses		321,540.00
3	Repairs and Alterations.....		15,000.00
4	Equipment		9,250.00
5	Total.....	\$	730,810.00
6	Out of the above appropriation for Current		
7	Expenses, the sum of \$15,000.00 shall be		
8	used only for payment to West Virginia		
9	University Medical Center for treatment		
10	of patients at Hopemont Sanitarium.		

64—Pinecrest Sanitarium**Acct. No. 431**

1	Personal Services	\$	575,130.00
2	Current Expenses		462,940.00
3	Repairs and Alterations.....		26,500.00
4	Equipment		11,400.00
5	Total.....	\$	1,075,970.00

65—Denmar State Hospital**Acct. No. 432**

1	Personal Services	\$	320,855.00
2	Current Expenses		127,290.00
3	Repairs and Alterations.....		38,730.00
4	Equipment		8,850.00
5	Total.....	\$	495,725.00

66—Berkeley Springs Sanitarium**Acct. No. 436**

1	Personal Services	\$	27,800.00
2	Current Expenses		6,800.00
3	Repairs and Alterations.....		6,000.00
4	Equipment		1,600.00
5	Total.....	\$	42,200.00

67—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	\$	182,530.00
2	Current Expenses		34,432.00
3	Rehabilitation Center		103,929.00
4	Case Services		325,000.00
5	Supervisory Services for Vending Stand		
6	Program for the Blind		16,658.00
7	Training and Special Projects		20,000.00
8	Social Security Matching Fund		16,000.00
9	Total	\$	698,549.00

BUSINESS AND INDUSTRIAL RELATIONS

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

Acct. No. 450

1	Personal Services	\$	248,710.00
2	Current Expenses		69,440.00
3	Equipment		4,650.00
4	Total	\$	322,800.00

69—*Department of Mines*

Acct. No. 460

1	Personal Services	\$	674,910.00
2	Current Expenses		142,500.00
3	Equipment		31,000.00
4	Total	\$	848,410.00

70—*Department of Commerce*

Acct. No. 465

1	Personal Services	\$	415,185.00
2	Current Expenses		319,000.00
3	Equipment		50,000.00
4	Urban Planning Revolving Fund		7,500.00
5	Mt. State Forest Festival		15,000.00

6	1964 New York Worlds Fair.....	100,000.00
7	Total.....	\$ 906,685.00
8	Any balance remaining in the appropriation	
9	"Industrial Development Loans" at the	
10	close of the fiscal year 1961-62 may be	
11	transferred to Special Revenue.	

71—*Commission on Interstate Cooperation*

Acct. No. 472

1	Total	\$ 10,000.00
2	Out of the above appropriation the sum of	
3	\$7,500.00 may be made available for West	
4	Virginia's membership in The Council of	
5	State Governments.	

72—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac	
2	River Basin Interstate Commission	\$ 3,600.00

73—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio	
2	River Valley Water Sanitation Commis-	
3	sion	\$ 15,860.00

74—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's Contribution to Southern	
2	Regional Education Board	\$ 44,500.00
3	To be expended upon requisition of the Gov-	
4	ernor.	

75—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services	\$ 12,320.00
2	Current Expenses	6,200.00
3	Equipment	1,550.00
4	Total.....	\$ 20,070.00

76—*West Virginia Historic Commission*

Acct. No. 477

1	Personal Services	\$	800.00
2	Current Expenses		26,700.00
3	Total	\$	27,500.00

77—*Department of Banking*

Acct. No. 480

1	Personal Services	\$	76,540.00
2	Current Expenses		29,750.00
3	Equipment		2,000.00
4	Total	\$	108,290.00

78—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services	\$	5,220.00
2	Current Expenses		5,710.00
3	Aerial Markers		1,000.00
4	Civil Air Patrol Expenses		7,500.00
5	Total	\$	19,430.00

79—*West Virginia Centennial Commission*

Acct. No. 487

1	Expenses for planning 1963 Centennial cele-		
2	bration	\$	66,250.00
3	Planning and promotion of special events....		5,000.00
4	To be transferred to "West Virginia Centen-		
5	nial Fund" provided by House Bill No. 57		
6	(1959 Legislature)		100,000.00
7	Total	\$	171,250.00

80—*West Virginia Non-Intoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services	\$	86,820.00
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2	Current Expenses	44,700.00
3	Equipment	800.00
4	Total.....	\$ 132,320.00

81—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$ 65,200.00
2	Current Expenses	23,800.00
3	Total.....	\$ 89,000.00

AGRICULTURE

82—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner.....	\$ 11,000.00
2	Other Personal Services.....	174,995.00
3	Current Expenses	73,185.00
4	Equipment	25,000.00
5	Eradication and Control of White Pine Blis-	
6	ter	16,995.00
7	Eradication and Prevention of Livestock	
8	Diseases	174,300.00
9	Eradication and Control of Japanese Beetle	
10	and other plant pests.....	16,945.00
11	Aid to Dairy Development Program.....	76,287.00
12	Eradication and Control of Oak Wilt.....	88,820.00
13	Plant Pest Control.....	14,300.00
14	Total.....	\$ 671,827.00
15	The appropriation "Eradication and Control	
16	of Oak Wilt" may be transferred to Special	
17	Revenue Funds for the purpose of match-	
18	ing Federal Funds.	

83—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

1	Personal Services	\$ 62,695.00
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2	Current Expenses	32,995.00
3	Watershed Improvement	25,000.00
4	Total	\$ 120,690.00

84—*Department of Agriculture—Marketing and Research*

Acct. No. 513

1	For cooperation with the Federal Govern-	
2	ment in a program of marketing and re-	
3	search	\$ 100,000.00
4	Any part or all of this appropriation may be	
5	transferred to Special Revenue Fund for	
6	the purpose of matching Federal Funds for	
7	the above named program.	

85—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	West Virginia State Fair	\$ 25,000.00
2	Agricultural Awards	38,500.00
3	Agricultural Centennial	6,500.00
4	Walnut Festival	3,500.00
5	Total	\$ 73,500.00
6	To be expended at the discretion of the Com-	
7	missioner of Agriculture in accordance	
8	with law.	
9	Any unexpended balance remaining in the	
10	appropriation "Agricultural Centennial"	
11	at the close of the fiscal year 1961-62 is	
12	hereby reappropriated for expenditure	
13	during the fiscal year 1962-63.	

CONSERVATION AND DEVELOPMENT

86—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services	\$ 112,156.00
2	Current Expenses	32,415.00
3	Equipment	5,000.00
4	Cooperative Mapping Program	60,000.00
5	Total	\$ 209,571.00

6 Of the above appropriation for Current Ex-
 7 penses, the sum of \$15,000.00 may be used
 8 to cooperate with the United States Geo-
 9 logical Survey in Ground Waters Re-
 10 sources Study.

11 Of the above appropriation for Cooperative
 12 Mapping Program the sum of \$10,000.00
 13 may be used for preparation of accurate
 14 geographic and political maps of West Vir-
 15 ginia.

87—*Natural Resources Commission*

Acct. No. 521

1 Any unexpended balance remaining in the
 2 1959-60 appropriation "For construction of
 3 forest tree nursery facilities at McClinic
 4 Wildlife Station" at the close of the fiscal
 5 year 1959-60 and reappropriated for the fis-
 6 cal year 1960-61; and any balance remain-
 7 ing in the 1960-61 appropriation "For con-
 8 struction of forest tree nursery facilities"
 9 at the close of the fiscal year 1961-62 is
 10 hereby reappropriated for expenditure
 11 during the fiscal year 1962-63, for "Plan-
 12 ning, improvements and construction on
 13 Natural Resources property and facilities;
 14 land requisition and impoundments."

88—*Department of Veterans Affairs*

Acct. No. 564

1 In aid of Veterans Day Patriotic Exercises	\$	2,000.00
2 To be expended subject to the approval of		
3 the Department of Veterans Affairs upon		
4 presentation of satisfactory plans by the		
5 Grafton G.A.R. Post, American Legion,		
6 Veterans of Foreign Wars and Sons of		
7 Veterans.		

89—*Natural Resources Commission*

Acct. No. 565

1 Personal Services	\$	833,480.00
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2	Current Expenses	255,225.00
3	Repairs and Alterations	104,250.00
4	Equipment	98,075.00
5	Historical Monuments and Parks	27,100.00
6	For planning, improvements and construc-	
7	tion on Natural Resources properties and	
8	facilities; land requisition and impound-	
9	ments	300,000.00
10	Out of the above appropriation \$100,000.00	
11	shall be used for construction of a tourist	
12	center at Sugar Grove Observatory.	
13	For cooperation with the United States De-	
14	partment of Agriculture in Fire Preven-	
15	tion and Control	85,000.00
16	Any unexpended balance remaining in the	
17	above item at the close of the fiscal year	
18	1961-62 is hereby reappropriated for ex-	
19	penditure during the fiscal year 1962-63.	
20	Total	\$ 1,703,130.00

PROTECTION

90—Department of Public Safety

Acct. No. 570

1	Personal Services	\$ 1,427,550.00
2	Current Expenses	724,157.00
3	Repairs and Alterations	22,600.00
4	Equipment	107,000.00
5	Total	\$ 2,281,307.00

91—Adjutant General—State Militia

Acct. No. 580

1	Personal Services	\$ 47,768.00
2	Current Expenses	103,765.00
3	Repairs and Alterations	7,100.00
4	Equipment	6,300.00
5	Compensation of Commanding Officers, Cler-	
6	ical Allowances and Uniform Allowances	66,900.00
7	Property Maintenance	34,245.00

8	State Armory Board	442,732.00
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9	Total	\$ 708,810.00
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92—*Department of Civil and Defense Mobilization*

Acct. No. 581

1	Personal Services	\$ 35,340.00
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2	Current Expenses	11,045.00
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3	Equipment	4,300.00
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4	Total	\$ 50,685.00
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93—*Auditor's Office—Social Security*

Acct. No. 582

1	To match contributions of state employees	
2	for social security	\$ 981,675.00

3 The above appropriation is intended to
 4 cover the State's share of social security
 5 costs for those spending units operating
 6 from General Revenue Fund and General
 7 School Fund appropriations. The State
 8 Road Commission, Department of Motor
 9 Vehicles, Workmen's Compensation Com-
 10 mission, Public Service Commission, and
 11 other departments operating from Special
 12 Revenue Funds and/or Federal Funds
 13 shall pay their proportionate share of the
 14 social security cost for their respective di-
 15 visions.

16 Any unexpended balance remaining in this
 17 appropriation at the close of the fiscal year
 18 1961-62 is hereby reappropriated for ex-
 19 penditure during the fiscal year 1962-63.

94—*State Board of Education—Insurance*

Acct. No. 584

1	Boiler Insurance Premiums	\$ 10,000.00
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2	To insure contents of buildings	8,000.00
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3	To insure contents of non-revenue producing	
4	buildings. First annual installment due on	

5	a policy covering a five-year period ending	
6	July 1, 1967.	
7	Total	\$ 18,000.00

95—*Commissioner of Public Institutions—Insurance*

Acct. No. 585

1	Boiler Insurance Premiums	\$ 7,000.00
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96—*West Virginia Board of Accountancy*

Acct. No. 586

1	To pay the per diem of members and other	
2	general expenses	15,000.00
3	From Collections	15,000.00

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

Acct. No. 587

1	To pay the per diem of members and other	
2	general expenses	\$ 15,000.00
3	From Collections	15,000.00

98—*State Board of Examiners for Registered Nurses*

Acct. No. 588

1	To pay the per diem of members and other	
2	general expenses	\$ 33,825.00
3	From Collections	33,825.00

99—*State Board of Dental Examiners*

Acct. No. 589

1	To pay the per diem of members and other	
2	general expenses	\$ 5,500.00
3	From Collections	5,500.00

100—*State Board of Pharmacy*

Acct. No. 590

1	To pay the per diem of members and other	
2	general expenses	\$ 9,980.00
3	From Collections	9,980.00

101—*State Board of Osteopathy*

Acct. No. 591

1 To pay the per diem of members and other		
2 general expenses.....	\$	1,000.00
3 From Collections.....		1,000.00

102—*State Board of Optometry*

Acct. No. 592

1 To pay the per diem of members and other		
2 general expenses.....	\$	2,500.00
3 From Collections		2,500.00

103—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses.....	\$	10,000.00
3 From Collections.....		10,000.00

104—*State Board of Registration for Professional
Engineers*

Acct. No. 594

1 To pay the per diem of members and other		
2 general expenses.....	\$	20,000.00
3 From Collections.....		20,000.00

105—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses.....	\$	4,000.00
3 From Collections.....		4,000.00

106—*State Veterinary Board*

Acct. No. 596

1 To pay the per diem of members and other		
2 general expenses.....	\$	300.00
3 From Collections		300.00

107—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 general expenses.....	\$	3,000.00

108—*Human Rights Commission*

Acct. No. 598

1 Personal Services	\$	12,885.00
2 Current Expenses		8,692.00
3 Equipment		750.00
4 Total	\$	22,327.00

109—*West Virginia State Board of Sanitarians*

Acct. No. 599

1 To pay the per diem of members and other		
2 general expenses.....	\$	800.00
3 From Collections		800.00

110—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1 Employers Accumulation Fund	\$	750,000.00
2 Expense Fund		25,000.00
3 Total	\$	775,000.00

4 The above appropriation is intended to cover
 5 the State's share of the West Virginia Pub-
 6 lic Employees Retirement cost in accord-
 7 ance with Senate Bill No. 22, (1961 Legis-
 8 lature) for those departments operating
 9 from General Revenue Fund and General
 10 School Fund appropriations. The State
 11 Road Commission, Department of Motor
 12 Vehicles, State Tax Commissioner—Gasoline
 13 Tax Division, Workmen's Compensation
 14 Commission, Public Service Commission,
 15 and other departments operating from
 16 Special Revenue Fund and/or Federal

17 Funds shall pay their proportionate share
 18 of the retirement costs for their respective
 19 divisions. When specific appropriations are
 20 not made such payments may be made
 21 from the balances in the various Special
 22 Revenue Funds in excess of specific appro-
 23 priations.

111—*State Road Commission*

Acct. No. 641

1 Total\$ 6,345,000.00
 2 The purpose of the above appropriation is to
 3 aid in payment of interest and principal on
 4 outstanding road bonds and may be trans-
 5 ferred to the State Road Fund upon the
 6 requisition of the Governor.

Sec. 2. Appropriations from Other Funds.—From the
 2 funds designated there is hereby appropriated conditionally
 3 upon the fulfillment of the provisions set forth in chapter
 4 one hundred thirty-two, acts of the Legislature, regular
 5 session, one thousand nine hundred sixty-one, the follow-
 6 ing amounts, as itemized, for expenditure during the fiscal
 7 year one thousand nine hundred sixty-three.

112—*State Road Commission—General Administration
 and Engineering*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Personal Services\$ 427,040.00
 2 Current Expenses 115,570.00
 3 Equipment 8,000.00

4 Total\$ 550,610.00

5 In addition to the foregoing appropriations
 6 and claims as authorized by this act or by
 7 law to be paid from the State Road Fund,
 8 the balance or residue of the annual re-
 9 cepts of the State Road Fund is hereby ap-
 10 propriated first for the payment of inter-

- 11 est on and principal of outstanding road
 12 bonds, and thereafter for maintenance,
 13 construction and reconstruction of state
 14 roads, in accordance with the provisions
 15 of chapter seventeen, code of West Vir-
 16 ginia, 1931, as amended.

113—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	720,000.00
2	Current Expenses		290,000.00
3	Equipment		33,000.00
4	Purchase of License Plates.....		207,000.00
5	Social Security Matching Fund.....		20,542.00
6	Employees Retirement Matching Fund.....		32,868.00
7	Total	\$	1,303,410.00

114—*State Tax Commissioner—Gasoline Tax
Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	112,460.00
2	Current Expenses		64,235.00
3	Equipment		5,000.00
4	Social Security Matching Fund		4,000.00
5	Total	\$	185,695.00

115—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	35,732.00
2	Current Expenses		12,680.00
3	Equipment		800.00
4	Total	\$	49,212.00

116—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	36,057.00
2	Current Expenses		7,350.00
3	Equipment		3,000.00
4	Vocational Aid		410,000.00
5	Total	\$	456,407.00
6	Any unexpended balance remaining in the		
7	"Vocational Aid Account" at the close of		
8	the fiscal year 1961-62 is hereby reappro-		
9	priated for expenditure during the fiscal		
10	year 1962-63.		

117—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	28,536.00
2	Current Expenses		9,908.00
3	Total	\$	38,444.00
4	Expenditures from this appropriation shall		
5	not exceed the amount to be reimbursed		
6	by the Federal Government.		
7	Federal funds in excess of the amounts here-		
8	by appropriated may be made available by		
9	budget amendment upon request of the		
10	State Superintendent of Schools and ap-		
11	proval of the Board of Public Works for		
12	any emergency which might arise in the		
13	operation of this division during the fiscal		
14	year.		

118—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$	12,000.00
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2	Other Personal Services	269,898.00
3	Current Expenses	81,600.00
4	Equipment	6,634.00
5	National Defense Education Act.....	140,000.00
6	Preparation Program for School Dropouts...	48,000.00
7	Statewide Testing Program	91,630.00
8	Experimental Projects Approved by the	
9	State Board of Education	15,000.00
10	Total.....	\$ 664,762.00
11	Any part or all of the appropriations for "Na-	
12	tional Defense Education Act" may be	
13	transferred to a Special Revenue Fund for	
14	the purpose of matching Federal Funds for	
15	this program.	

119—State Board of School Finance

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 17,750.00
2	Current Expenses	3,310.00
3	Total	\$ 21,060.00

120—Department of Education—School Lunch Program

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 53,360.00
2	Current Expenses	16,900.00
3	Aid to Counties—Includes hot lunches and	
4	canning for hot lunches	300,000.00
5	Total.....	\$ 370,260.00

121—Department of Education

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents	\$ 63,000.00
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122—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Home.....	\$	25,000.00
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123—*State Tax Commissioner—
Store and General Licenses Division*

Acct. No. 712

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	36,800.00
2	Current Expenses		3,500.00
3	Total	\$	40,300.00

124—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

1	Scholarships for Teacher Training.....	\$	200,000.00
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125—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	27,300.00
2	Current Expenses		16,395.00
3	Equipment		500.00
4	Social Security Matching Fund		550.00
5	Public Employees Retirement Matching Fund		1,200.00
6	Total	\$	45,945.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out
 9 of collections of license fees as provided
 10 by law.

126—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	5,000.00
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- 2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out
 4 of collections of license fees and fines as
 5 provided by law.
 6 No expenditures shall be made from this
 7 account except for hospitalization, medical
 8 care, and/or funeral expenses for persons
 9 contributing to this fund.

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

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1 Current Expenses	\$	15,000.00
2 The total amount of this appropriation shall		
3 be paid from Special Revenue Fund out of		
4 fees and collections as provided by law.		
5 Special funds in excess of the amount herein		
6 appropriated may be made available by		
7 budget amendment upon request of the		
8 State Auditor and the approval of the		
9 Board of Public Works.		

128—*Department of Finance and Administration*
Division of Purchases—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	79,100.00
2 Current Expenses		14,200.00
3 Equipment		6,500.00
4 Social Security Matching Fund		2,475.00
5 Public Employees Retirement Matching Fund		3,955.00
6 Total	\$	106,230.00
7 The total amount of this appropriation shall		
8 be paid from Special Revenue Fund as pro-		
9 vided by chapter one hundred thirty-two,		
10 acts of the Legislature, regular session, one		
11 thousand nine hundred sixty-one.		

12 The above appropriation includes salaries
 13 and operating expenses.
 14 There is hereby appropriated from this fund,
 15 in addition to the above appropriation,
 16 the necessary amount for the purchase of
 17 supplies for resale.

129—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	161,990.00
2 Current Expenses		40,700.00
3 Equipment		8,000.00
4 Social Security Matching Fund		4,500.00
5 Public Employees Retirement Matching Fund		7,000.00
6 Total	\$	222,190.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out of
 9 collections made by the Department of
 10 Agriculture as provided by law. It is the
 11 intention that special funds in excess of
 12 the amounts hereby appropriated shall be
 13 made available by budget amendment
 14 upon request of the Commissioner of
 15 Agriculture.

130—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	32,000.00
2 Current Expenses		17,050.00
3 Social Security Matching Fund		960.00
4 Public Employees Retirement Matching Fund		1,535.00
5 Total	\$	51,545.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out
 8 of collections made by the State Commit-

- 9 tee of Barbers and Beauticians as provided
10 by law.

131—*Department of Employment Security*

Acct. No. 825

TO BE PAID FROM SPECIAL REVENUE FUND (FEDERAL)

1	Salary of Director.....	\$	13,500.00
2	Other Personal Services.....		2,425,414.00
3	Other Expenses.....		725,000.00
4	Total.....	\$	3,163,914.00
5	It is the intention that special funds in ex-		
6	cess of the amounts hereby appropriated		
7	shall be made available by budget amend-		
8	ment upon request of the Director of the		
9	West Virginia Department of Employment		
10	Security and approval of the Board of		
11	Public Works.		
12	The total amount of this appropriation to be		
13	paid from Federal Funds.		

132—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	104,285.00
2	Current Expenses.....		14,430.00
3	Equipment.....		3,000.00
4	Social Security Matching Fund.....		3,260.00
5	Public Employees Retirement Matching Fund.....		5,215.00
6	Total.....	\$	130,190.00
7	The total amount of this appropriation shall		
8	be paid from Special Revenue Fund out of		
9	collections for license and report fees as		
10	provided by law.		

133—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	109,100.00
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2	Current Expenses	30,345.00
3	Equipment	5,800.00
4	Building Repairs and Maintenance	2,600.00
5	Social Security Matching Fund	2,630.00
6	Public Employees Retirement Matching Fund	4,205.00
7	Total.....	\$ 154,680.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out of	
10	collections of the special tax of one half of	
11	one per cent of premium receipts of fire	
12	insurance companies as provided by law.	

134—Public Service Commission

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$ 24,000.00
2	Other Personal Services	347,095.00
3	Current Expenses	45,000.00
4	Equipment	6,650.00
5	Social Security Matching Fund	8,800.00
6	Public Employees Retirement Matching Fund	18,455.00
7	Total.....	\$ 450,000.00
8	The total amount of this appropriation shall	
9	be paid from Special Revenue Fund out of	
10	collections for special license fees from	
11	public service corporations as provided by	
12	law. Out of the above appropriation	
13	\$5,000.00 may be transferred to the State	
14	Water Resources Commission of the Na-	
15	tural Resources Commission for use in	
16	cooperation with the U. S. Geological Sur-	
17	vey in a program of stream gauging.	

135—Public Service Commission—Motor Carrier
Division

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 197,360.00
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2	Current Expenses	44,980.00
3	Equipment	4,600.00
4	Social Security Matching Fund.....	5,900.00
5	Public Employees Retirement Matching Fund	9,500.00

6	Total	\$ 262,340.00
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7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 receipts collected for or by the Public
10 Service Commission pursuant to and in
11 the exercise of regulatory authority over
12 motor carriers as authorized by law.

136—*Natural Resources Commission*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 1,125,470.00
2	Current Expenses	719,116.00
3	Repairs and Alterations	101,700.00
4	Equipment	144,235.00
5	Land Purchases	75,000.00

6	Total	\$ 2,165,521.00
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7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 fees collected by the Natural Resources
10 Commission. Expenditures shall be limited
11 to the amounts appropriated except for
12 Federal Funds received and Special Funds
13 collected at state parks. Special Funds in
14 excess of the amounts hereby appropriated
15 may be made available by budget amend-
16 ment upon request of the Natural Re-
17 sources Commission and approval of the
18 Board of Public Works for any emer-
19 gency which might arise in the operation
20 of this division during the fiscal year.

137—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	97,200.00
2	Current Expenses		67,142.00
3	Repairs and Alterations		7,100.00
4	Equipment		18,000.00
5	Social Security Matching Fund		600.00

6	Total	\$	190,042.00
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7 The total amount of this appropriation shall
8 be paid from Special Revenue Fund out of
9 fees collected for inspection stickers as
10 provided by law.

11 Special Funds in excess of the amounts
12 hereby appropriated may be made avail-
13 able by budget amendment upon request
14 of the Department of Public Safety and
15 approval of the Board of Public Works
16 for the purpose of repairs to, or construc-
17 tion of police barracks, not to exceed one
18 hundred thousand dollars in any one fiscal
19 year.

138—*West Virginia Liquor Control Commission*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$	10,000.00
2	Other Personal Services		2,710,970.00
3	Current Expenses		835,000.00
4	Repairs and Alterations		32,500.00
5	Equipment		57,500.00
6	Social Security Matching Fund		85,030.00
7	Public Employees Retirement Matching Fund		136,040.00

8	Total	\$	3,867,040.00
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9 The total amount of this appropriation shall

- 10 be paid from Special Revenue Fund out of
11 liquor revenues.
12 The above appropriation includes the salaries
13 of store personnel, store inspectors, store
14 operating expenses and equipment; and
15 salaries, expenses and equipment of ad-
16 ministration offices.
17 There is hereby appropriated from liquor
18 revenues, in addition to the above appro-
19 priation, the necessary amount for the
20 purchase of liquor, as provided by law.

139—*West Virginia Civil Service System*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	88,400.00
2	Current Expenses		22,185.00
3	Social Security Matching Fund		2,900.00
4	Public Employees Retirement Matching Fund		4,325.00
5	Total	\$	117,810.00
6	The total amount of this appropriation shall		
7	be paid from Special Revenue Fund sup-		
8	ported by participating agencies as provid-		
9	ed by law.		
10	The Board of Public Works is hereby au-		
11	thorized to make available by budget		
12	amendment, upon request of the Civil		
13	Service Commission, funds in excess of		
14	the amounts hereby appropriated that		
15	may become available as a result of acts		
16	of the Legislature—1961 Session.		

140—*Department of Labor—Bedding Division*

Acct. No. 843

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	8,220.00
2	Current Expenses		5,580.00

3 Social Security Matching Fund..... 390.00

4 Total.....\$ 14,190.00

5 The total amount of this appropriation shall
6 be paid from Special Revenue Fund out of
7 fees, fines and penalties as provided by
8 law.

141—*West Virginia University—Special Capital
Improvement Fund*

Acct. No. 853

TO BE PAID FROM SPECIAL REVENUE FUND

1 Forestry Building\$ 200,000.00

2 Communication Arts Building..... 567,704.00

3 Total.....\$ 767,704.00

4 The total amount of this appropriation shall
5 be paid from the non-revolving Capital
6 Improvement Fund created by the 1959
7 Legislature.
8 Any unexpended balance remaining in this
9 appropriation at the close of the fiscal year
10 1961-62 is hereby reappropriated for ex-
11 penditure during the fiscal year 1962-63.

142—*State Board of Education—Special Capital
Improvement Fund*

Acct. No. 854

TO BE PAID FROM SPECIAL REVENUE FUND

1 Renovation of Administration Building at
2 Fairmont State College.....\$ 350,000.00

3 Women's Dormitory at Marshall University.. 600,000.00

4 Renovation of Administration Building at
5 Glenville State College..... 60,000.00

6 Total.....\$ 1,010,000.00

7 The total amount of this appropriation shall
8 be paid from the non-revolving Capital

- 9 Improvement Fund created by the 1959
10 Legislature.
11 Any unexpended balance remaining in this
12 appropriation at the close of the fiscal year
13 1961-62 is hereby reappropriated for ex-
14 penditure during the fiscal year 1962-63.

143—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$	688,750.00
2	Current Expenses		257,319.00
3	Equipment		29,398.00
4	Social Security Matching Fund		21,453.00
5	Public Employees Retirement Matching Fund		35,755.00
6	Total	\$	1,032,675.00
7	There is hereby authorized to be paid out of		
8	the above appropriation for Current Ex-		
9	penses the amount necessary for the pre-		
10	miums on bonds given by the State Treas-		
11	urer and bond custodian for the protection		
12	of the Workmen's Compensation Fund.		

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 year
5 one thousand nine hundred sixty-two to supplement the
6 1961-62 appropriations, and to be available for expenditure
7 upon date of passage.

144—*Department of Finance and Administration*

Acct. No. 210

1	Current Expenses	\$	5,000.00
2	Postage		14,000.00
3	Total	\$	19,000.00

145—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	4,817.00
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146—*West Virginia Industrial Home for Girls*

Acct. No. 372

1 Personal Services	\$	3,240.00
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147—*West Virginia Training School*

Acct. No. 419

1 Repair and Alterations	\$	2,300.00
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2 Equipment		14,500.00
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3 Total	\$	16,800.00
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148—*Racing Commission*

Acct. No. 495

1 Personal Services	\$	9,840.00
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2 Current Expenses		1,050.00
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3 Total	\$	10,890.00
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149—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$	97,040.00
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2 Current Expenses		49,264.00
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3 Equipment		86,011.00
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4 License Plates		8,100.00
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5 Social Security Matching Fund		3,033.00
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6 Total	\$	243,448.00
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150—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1 Preparation program for school dropouts	\$	30,000.00
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151—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	4,500.00
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2	Current Expenses	1,300.00
3	Equipment	3,000.00
4	Social Security Matching Fund	158.00
5	Public Employees Retirement Matching	
6	Fund	158.00
7	Total	\$ 9,116.00

Sec. 4. Awards for Claims Against the State.—From the 2 funds designated there are hereby appropriated for the 3 fiscal year 1962-63, for payment of claims against the State, 4 the following amounts, as itemized:

Claims versus the Adjutant General

TO BE PAID FROM GENERAL REVENUE FUND

1	Okey F. Smith	\$ 100.00
2	Norris Barnett	359.00
3	The Estate of Jan C. Dennison, deceased....	785.00

Claims versus Department of Mental Health

TO BE PAID FROM GENERAL REVENUE FUND

1	E. H. Bissel	\$ 600.00
2	Elk Grocery Company	6,136.09

Claims versus Public Institutions

TO BE PAID FROM GENERAL REVENUE FUND

1	Lee Lawson, Guardian of Archie Lee	
2	Lawson	\$ 1,500.00
3	Ralph Keaton	600.00
4	Ilene Pauline Sinsel	546.12
5	The Chesapeake & Potomac Telephone Com-	
6	pany of West Virginia	233.23
7	Sanifer's, Inc.	26.55
8	W. B. Cunningham	500.00
9	Capitol Paper Supply	63.00
10	Flat Iron Drug Store	36.28
11	General Electric Company	301.88
12	Hygrade Food Products Corporation	147.26
13	Howard's, Inc.	1.50
14	Parke, Davis & Company	1,072.49

15	Picker X-Ray Corporation.....	4.50
16	Tug River Lumber Company.....	45.19
17	Cumberland and Allegheny Gas Company..	2,243.10
18	James Donithan, Barbara Sue Donithan,	
19	Evelyn Donithan	2,500.00

Claims versus Department of Public Safety

TO BE PAID FROM GENERAL REVENUE FUND

1	Hinton Hospital	\$	283.45
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*Claims versus State Board of Education, Division of
Vocational Rehabilitation*

TO BE PAID FROM GENERAL REVENUE FUND

1	Eastern Greyhound Lines	\$	32.15
2	Robert K. Scott, M.D.....		50.00

Claims versus State Road Commission

TO BE PAID FROM STATE ROAD FUND

1	Cecil Corathers	\$	100.00
2	Rhoda Lane.....		300.00
3	Raymond Paul Emsweller.....		5,000.00
4	Louis Dittmar		101.19
5	Mrs. Alfred R. Bowles.....		136.12
6	Doris Gale Davis.....		171.09
7	Charles E. Curry.....		24.50
8	Charles H. Phillips.....		7.42
9	Leonard A. Porter.....		59.63
10	William L. Wiles.....		4.68
11	Hubert Wriston		35.13
12	Coleman Perdue		47.38
13	Marion Canterbury		75.00
14	Alice E. McClung.....		1,440.00
15	V. P. Stickley, d/b/a V. P. Stickley, General		
16	Contractor		25,000.00

Sec. 5. Appropriations for Emergency Relief of Unem-

2 employment.—In addition to all other appropriations con-
3 tained in this bill, (Budget Bill), the following items are
4 hereby appropriated from the General Revenue Fund for

5 the purpose of providing emergency relief of unemploy-
6 ment throughout the State of West Virginia:

7 Item I. State Road Commission: For works projects of
8 an improvement or maintenance nature relating to pri-
9 mary and secondary roads, including but not limited to
10 installation and extension of drainage and drainage struc-
11 tures, development of roadside parks, cleaning of streams
12 along and of rights-of-way of existing road system, and
13 elimination of dangerous curves and widening of primary
14 and secondary roads. The amount herein appropriated
15 shall be used for labor only\$ 1,750,000.00

16 The appropriation to the State Road Commission may be
17 transferred to the State Road Fund upon the requisition of
18 the Governor.

19 Item II. Department of Natural Resources: For repairs,
20 maintenance, and improvement of Department of Natural
21 Resources facilities, including but not limited to state
22 parks, state forests, state game areas, lakes and streams.
23 The amount herein appropriated shall be used for labor
24 only, except an amount not to exceed \$100,000.00 may
25 be used for materials and supplies for permanent improve-
26 ments\$ 850,000.00

27 Item III. Governor: For allocation and transfer in his
28 discretion to mental hospitals, institutions of higher edu-
29 cation and those agencies and departments of state govern-
30 ment which satisfy the Governor that they can and will
31 expend requested sums in accordance with the purpose
32 of this appropriation. The amount herein appropriated
33 shall be used for labor and necessary administrative
34 costs in connection with the emergency employment pro-
35 gram\$ 400,000.00

36 Any unexpended balance remaining in the appropriation
37 provided under section six, Items 1, 2, and 3, of the Budget
38 issued by the regular session of the Legislature, 1961, for
39 the fiscal year 1961-62, is hereby reappropriated for ex-
40 penditure during the 1962-63 fiscal year, including any
41 amounts transferred from these items to other spending
42 units.

43 In the event Federal Funds are made available for the
44 relief of the unemployed, the Governor may, at his discre-
45 tion transfer any or all of the above items to Special

46 Revenue Fund for the purpose of matching said Federal
47 Funds.

Sec. 6. Appropriations from Surplus Revenues.—The fol-
2 lowing items are appropriated from the General Revenue
3 Fund, subject to the following terms and conditions:

4 (a) The following items are hereby appropriated and
5 are to be available for expenditure only out of the surplus
6 in the treasury on or after the first day of July, 1962, sub-
7 ject to the conditions and limitations hereinafter expressed.

8 (b) Expenditures authorized, which are for construction
9 purposes, shall be for a complete and usable unit or project
10 including necessary equipment.

11 (c) The Board of Public Works shall review the revenues
12 of the State from the first day of July, 1962, to the date that
13 appropriations hereunder are expected to be made avail-
14 able for expenditure, and determine whether, in its opinion,
15 revenues then in prospect or on hand will be sufficient to
16 meet all appropriations under this and other sections of
17 this budget bill, and make a finding with respect thereof.
18 In the event that such finding shall show sufficient reve-
19 nues on hand or in prospect to meet all other appropria-
20 tions and reappropriations made by this act (Budget Bill),
21 the Board of Public Works may, from any excess over and
22 above the amount required to meet all appropriations con-
23 tained in the act, release the following items subject to the
24 foregoing conditions if available funds will permit:

25 Item I. West Virginia Schools for the Deaf and Blind, for
26 construction of classroom building.....\$ 548,250.00

27 Item II. West Virginia Training School, for construction
28 of a Crib Dormitory building.....\$ 450,000.00

Sec. 7. Special Revenue Appropriations.—There is hereby
2 appropriated for expenditure during the fiscal year one
3 thousand nine hundred sixty-three 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 section two, article two, chapter twelve of the code of West
7 Virginia, 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 articles
11 two and three, of chapter twelve, code of West Virginia,
12 and chapter one hundred thirty-two, acts of the Legisla-
13 ture, regular session, one thousand nine hundred sixty-one,
14 and unless the spending unit has filed with the state direc-
15 tor of the budget and the state auditor prior to the begin-
16 ning of each fiscal year:

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

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

Sec. 8. Specific Funds and Collection Accounts.—A fund
2 or collection account, which by law is dedicated to a specific
3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account, and
5 shall be expended according to the provisions of article
6 three, chapter twelve of the code of West Virginia, one
7 thousand nine hundred thirty-one.

8 There is hereby appropriated to Marshall University the
9 sum of \$57,312.24 representing interest earned on construc-
10 tion funds in the hands of the State Sinking Fund Com-
11 mission, for the purpose of purchasing equipment and the
12 renovation of existing facilities at the Marshall University
13 Heights property.

Sec. 9. 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 war-
9 rant to the treasurer and the treasurer shall pay the war-
10 rant out of the fund into which the amount was originally
11 paid.

Sec. 10. Sinking Fund Deficiencies.—There is hereby ap-
2 propriated to the Board of Public Works a sufficient
3 amount to meet a deficiency that may arise in the funds of

4 the state sinking fund commission because of the failure of
5 any state agency for either general obligation or revenue
6 bonds or any local taxing district for general obligation
7 bonds to remit funds necessary for the payment of interest
8 and Sinking Fund requirements. The Board of Public
9 Works is authorized to transfer from time to time such
10 amounts to the State Sinking Fund Commission as may be
11 necessary for this purpose.

12 The State Sinking Fund Commission shall reimburse the
13 State of West Virginia through the Board of Public Works
14 from the first remittance collected from any state agency
15 or local taxing district for which the Board of Public Works
16 advanced funds, with interest at the rate carried by the
17 bonds for which the advance was made.

Sec. 11. Appropriations from Taxes and License Fees.—

2 There is hereby appropriated from the cigarette tax for ad-
3 ministration and enforcement of the law relating to said tax
4 a sum not to exceed one and one-half per cent of the tax
5 collected or stamps sold. There is hereby appropriated
6 from the soft drink tax revenues for administration and
7 enforcement of the law relating to said tax, a sum not to
8 exceed two and one-half per cent of the total revenues
9 collected. All such salaries and expenses, authorized by
10 law as aforesaid, shall be paid by the Tax Commissioner
11 through the state treasurer out of gross collections.

Sec. 12. 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 corpo-
7 rations as provided by sections seventy-five and seventy-
8 seven of article twelve, chapter eleven, code of West Vir-
9 ginia.

Sec. 13. Appropriations for Local Governments.—There

2 is hereby appropriated for payment to counties, districts,
3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due county, district, and municipal
5 corporations and which have been paid into the treasury:

- 6 (a) For the redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

Sec. 14. Total Appropriations.—Where only a total sum
2 is appropriated to a spending unit that total sum shall in-
3 clude personal services, current expenses, and capital out-
4 lay, except as otherwise provided in Title I, Section 3.

Sec. 15. General School Fund.—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropriated
4 for expenditure in accordance with section six, article nine,
5 chapter eighteen of the code of West Virginia, one thousand
6 nine hundred thirty-one, as amended.

Title 3. Administration

Section

- 1. Appropriations conditional.
- 2. Constitutionality.

Section 1. Appropriations Conditional.—The expendi-
2 ture of the appropriations made by this act, except those
3 appropriations 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 article five, chapter five, of the code of West Virginia, one
7 thousand nine hundred thirty-one, as amended by chapter
8 one hundred thirty-two, acts of the Legislature, regular
9 session, one thousand nine hundred sixty-one.

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

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 portions shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 2

(Senate Bill No. 47—By Mr. Martin)

[Passed February 8, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

Section

1. Finding and declaring certain claims against the Adjutant General; Department of Mental Health; Department of Public Institutions; Department of Public Safety; State Board of Education; and the State Road Commission, to be moral obligations of the state, and directing payment thereof.

Section 1. Finding and Declaring Certain Claims

2 Against the Adjutant General; Department of Mental
3 Health; Department of Public Institutions; Department of
4 Public Safety; State Board of Education; and the State
5 Road Commission, to Be Moral Obligations of the State,
6 and Directing Payment Thereof.—The Legislature has
7 considered the findings of fact and recommendations re-
8 ported to it by the attorney general concerning various
9 claims against the state and agencies thereof, and in re-
10 spect to each of the following claims the Legislature
11 adopts those findings of fact as its own, and hereby de-
12 clares it to be the moral obligation of the state to pay each
13 such claim in the amount specified below, and directs the
14 auditor to issue warrants for the payment thereof out of
15 any fund appropriated and available for the purpose.

(a) Claims versus the Adjutant General:

17	(1) Okey F. Smith	\$ 100.00
18	(2) Norris Barnett	359.00
19	(3) The Estate of Jan C. Dennison,	
20	deceased	785.00

(b) Claims versus Department of Mental Health:

22	(1) E. H. Bissel	600.00
23	(2) Elk Grocery Company	6,136.09

(c) Claims versus Department of Public Institutions:

25	(1) Lee Lawson, Guardian of Archie	
26	Lee Lawson	1,500.00
27	(2) Ralph Keaton	600.00
28	(3) Ilene Pauline Sinsel	546.12
29	(4) The Chesapeake & Potomac Tele-	
30	phone Company of West Virginia ..	233.23
31	(5) Sandifer's, Inc.	26.55
32	(6) W. B. Cunningham	500.00
33	(7) Capitol Paper Supply	63.00
34	(8) Flat Iron Drug Store	36.28
35	(9) General Electric Company	301.88
36	(10) Hygrade Food Products Corpora-	
37	tion	147.26
38	(11) Howard's, Inc.	1.50
39	(12) Parke, Davis & Company	1,072.49
40	(13) Picker X-Ray Corporation	4.50
41	(14) Tug River Lumber Company	45.19
42	(15) Cumberland and Allegheny Gas	
43	Company	2,243.10
44	(16) James Donithan, Barbara Sue	
45	Donithan, Evelyn Donithan	2,500.00
46	(d) Claims versus Department of Public	
47	Safety	
48	(1) Hinton Hospital	283.45
49	(e) Claims versus State Board of Education, Division	
50	of Vocational Rehabilitation:	
51	(1) Eastern Greyhound Lines	32.15
52	(2) Robert K. Scott, M. D.	50.00
53	(f) Claims versus State Road Commission:	
54	(1) Cecil Corathers	100.00
55	(2) Rhoda Lane	300.00
56	(3) Raymond Paul Emsweller	5,000.00
57	(4) Louis Dittmar	101.19
58	(5) Mrs. Alfred R. Bowles	136.12
59	(6) Doris Gale Davis	171.09
60	(7) Charles E. Curry	24.50
61	(8) Charles H. Phillips	7.42
62	(9) Leonard A. Porter	59.63
63	(10) William L. Wiles	4.68
64	(11) Hubert Wriston	35.13
65	(12) Coleman Perdue	47.38

66	(13) Marion Canterbury	75.00
67	(14) Alice E. McClung	1,440.00
68	(15) V. P. Stickley Trading and doing	
69	business as V. P. Stickley General	
70	Contractor	\$ 25,000.00

CHAPTER 3

(House Bill No. 20—By Mr. Speaker, Mr. Singleton)

[Passed January 26, 1962; in effect from passage. Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending article seven thereof, relating to the executive department of state government.

Be it enacted by the Legislature of West Virginia:

State Executive and Budget Amendment.

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "State Executive and Budget Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Section 1. Submitting an Amendment to the State Constitution.—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article seven of the constitution of West Virginia be amended to read as follows:

"Article VII. The Executive.

Section 1. Governor.—The chief executive power of the State shall be vested in a Governor, who shall cause

14 the laws to be faithfully executed. He may require the
15 Attorney General to institute and prosecute appropriate
16 actions and proceedings in the courts, brought in the
17 name of the State, to enforce compliance with the laws.

18 **Sec. 2. Elected Officers.**—In addition to a Governor,
19 there shall be an Attorney General, who shall be the
20 chief legal officer of the State, an Auditor, who shall be
21 the chief fiscal officer of the State, a Commissioner of
22 Agriculture, a Secretary of State and a Treasurer. These
23 officers shall be elected by the qualified voters of the
24 State, and the election shall be held at such times and
25 places as may be prescribed by law. Their terms of
26 office shall be four years and until their successors as
27 designated herein have qualified. Their terms shall com-
28 mence on the first Monday after the second Wednesday
29 of January next after their election. During their terms
30 of office, they shall reside within the county in which
31 the seat of government is located. Unless otherwise pro-
32 vided by law, they shall keep at the seat of government
33 the public records, books and papers pertaining to their
34 respective offices. They shall have such powers and per-
35 form such duties as may be prescribed by this constitu-
36 tion or by law.

37 **Sec. 3. Election Returns; Contests.**—The returns of
38 every election for the officers named in section two of
39 this article shall be sealed and transmitted by the re-
40 turning officers to the Secretary of State, directed to the
41 Speaker of the House of Delegates, who shall, immediately
42 after the organization of the House, before proceeding to
43 other business, and in the presence of a majority of the
44 members of each House of the Legislature, open and pub-
45 lish the returns. The person having the highest number
46 of votes for each of the offices shall be declared elected;
47 but if two or more shall have the highest and equal
48 number of votes for the same office, one of them shall be
49 chosen for the office by joint vote of a majority of the
50 members of both Houses.

51 Contested elections for these state elective offices shall
52 be determined in such manner as may be prescribed by
53 law.

54 **Sec. 4. Eligibility.**—None of the officers named in sec-
55 tion two of this article shall hold any other office during
56 the term of his service. A person who has been elected
57 or has served as Governor during all or any part of two
58 consecutive terms shall be ineligible for the office of
59 Governor during any part of the term immediately fol-
60 lowing the second of the two consecutive terms.

61 **Sec. 5. Executive and Administrative Organization.**—
62 Except for the offices of Governor, Attorney General,
63 Auditor, Commissioner of Agriculture, Secretary of State
64 and Treasurer, and governing boards of institutions of
65 higher education, all executive and administrative offices,
66 departments, and instrumentalities of the state govern-
67 ment, and their respective functions, powers and duties,
68 shall be allocated by the Legislature among and within
69 not more than twenty principal departments, in such
70 manner as to group the same according to major purposes
71 so far as practicable. However, temporary commissions
72 for special purposes may be established by law, and such
73 commissions need not be allocated within a principal
74 department.

75 Except for the offices of Attorney General, Auditor,
76 Commissioner of Agriculture, Secretary of State and
77 Treasurer, and the governing boards of institutions of
78 higher education, each principal department shall be
79 under the supervision of the Governor. The head of each
80 such principal department shall be a single executive
81 unless otherwise provided by law.

82 The Legislature, in compliance with these provisions,
83 shall prior to the first day of July, one thousand nine
84 hundred sixty-three, and may from time to time there-
85 after, allocate by law the executive and administrative
86 offices, departments and instrumentalities of the state
87 government among and within the principal departments.
88 If such allocation shall not have been completed within
89 the time limited, the Governor shall call an extraordinary
90 session of the Legislature to which he shall submit a plan
91 or plans for consideration to complete such allocation;
92 and no other matters shall be considered at such session.

93 **Sec. 6. Appointment and Removal of Officers.**—The
94 Governor shall nominate and, by and with the advice and
95 consent of the Senate (a majority of all the Senators
96 elected concurring by yeas and nays), appoint, to serve
97 at the pleasure of the Governor during their terms of
98 office and until the appointment and qualification of their
99 successors, the heads of the principal departments which
100 are under his supervision, whether the head be a single
101 executive or members of a board, commission, or other
102 body prescribed by law.

103 Without such advice and consent, unless otherwise pro-
104 vided by law, the Governor shall also appoint all other
105 officers whose offices are established by this Constitution
106 or shall be created by law and whose appointment or
107 election is not otherwise provided; and no such officers,
108 except officers of the Legislature, shall be appointed or
109 elected by the Legislature. Except as otherwise provided
110 by general laws, such officers shall serve at the pleasure
111 of the Governor. He shall also have the power to remove
112 any officer, in the manner prescribed by law, for incom-
113 petency, neglect of duty, gross immorality, malfeasance
114 in office, or official misconduct. The Governor shall fill
115 any vacancies in such offices in the manner prescribed by
116 law. Unless removed, such officers shall continue to serve
117 until their successors are appointed and qualified.

118 **Sec. 7. Governor's Messages.**—The Governor shall, at
119 the beginning of each session, and at such other time as
120 he may deem necessary, give to the Legislature infor-
121 mation by message as to the condition and affairs of the
122 State, and shall in like manner recommend such measures
123 as he shall deem desirable or expedient.

124 **Sec. 8. Extraordinary Legislative Session.**—The Gover-
125 nor may convene the Legislature in extraordinary session
126 whenever, in his opinion, the interest of the State requires
127 it; and it shall be his duty to convene the Legislature on
128 application in writing of three fifths of the members
129 elected to each House. When convened at the Governor's
130 instance, the Legislature shall enter upon no business
131 except that stated in the proclamation by which it was
132 convened.

133 **Sec. 9. Legislature's Meeting Place.**—The Governor
134 may direct that sessions of the Legislature be held at
135 some convenient place other than the seat of government
136 whenever from the presence of an enemy, or from any
137 other cause, it shall become an unsafe place for the meet-
138 ing of the Legislature.

139 **Sec. 10. Commander-in-Chief of Armed Forces.**—The
140 Governor shall be commander-in-chief of the armed forces
141 of the State (except when they shall be called into the
142 service of the United States), and may call the same out
143 to enforce the execution of the laws, suppress insurrec-
144 tion, or repel invasion.

145 **Sec. 11. Executive Clemency.**—The Governor shall
146 have and may exercise general powers of executive clem-
147 ency, including the power to commute capital punish-
148 ment and other sentences, to grant reprieves, to remit
149 fines and penalties in whole or in part, and except where
150 the prosecution has been carried on by the House of
151 Delegates, to grant full or conditional pardons after con-
152 viction. The Legislature may by law provide for a board
153 composed of not more than three members, to be appoint-
154 ed by the Governor and to serve during his will and
155 pleasure, to which board he may delegate any or all of
156 his powers of executive clemency, except the power to
157 commute capital punishment. The Governor or the board,
158 as the case may be, shall report to each House of the
159 Legislature at every regular session thereof, and at such
160 other times as required by either House, the particulars
161 of every case in which executive clemency has been
162 granted since the last preceding report. The report shall
163 be in such form and detail as may be prescribed by law.

164 **Sec. 12. Governor's Approval or Disapproval of Bills**
165 **Passed by the Legislature.**—Except as otherwise pro-
166 vided in this Constitution, every bill passed by the Legis-
167 lature shall, before it becomes a law, be presented to the
168 Governor. If he approve, he shall sign it, and thereupon
169 it shall become a law; but if not, he shall return it, with
170 his objections, to the House in which it originated, which
171 House shall enter the objections at large upon its journal,
172 and may proceed to reconsider the bill. Upon such re-

173 consideration, if a majority of the members elected to
174 that House agree to pass the bill, it shall be sent, together
175 with the objections of the Governor to the other House,
176 by which it may likewise be reconsidered, and if approved
177 by a majority of the members elected to that House, it
178 shall become a law notwithstanding the objections of
179 the Governor: *Provided*, That, if upon such reconsider-
180 ation the bill be amended and reenacted, then it shall
181 be again sent to the Governor and he shall act upon it
182 as if it were before him for the first time. In all such
183 cases, the vote of each House shall be determined by
184 yeas and nays to be entered on the journal.

185 Any bill which shall not be returned by the Governor
186 within five days, Sunday excepted, after it shall have
187 been presented to him, shall be a law, in the same manner
188 as if he had signed it, unless the Legislature shall, by
189 adjournment, prevent its return; in which case it shall
190 be filed with his objections in the office of an officer pre-
191 scribed by law within fifteen days, Sundays excepted,
192 after such adjournment, or become a law.

193 **Sec. 13. Salaries of Elected Officers.**—The Governor,
194 Attorney General, Auditor, Commissioner of Agriculture,
195 Secretary of State and Treasurer shall each receive for
196 his services a salary to be fixed by law, which shall not
197 be increased or diminished during his official term, and
198 for the performance of any official duty he shall not re-
199 ceive to his own use any fees, costs, perquisites of office
200 or compensation, except his salary. He shall account for
201 and pay over in the manner provided by law all moneys
202 collected by him by virtue of his office.

203 **Sec. 14. Vacancy in Governorship; Judicial Determina-**
204 **tion.**—In the event of a vacancy in the office of Governor
205 resulting from death, resignation or removal of a Governor
206 in office, or the death of a Governor-elect or his failure
207 to qualify, or from any other cause, the functions, powers,
208 duties and emoluments of the office shall devolve, first,
209 upon the President of the Senate; second, upon the
210 Speaker of the House of Delegates; and then upon such
211 officers and in such order of succession as may be pro-
212 vided by law; and in any of these cases, except as other-

213 wise provided herein, the person designated shall serve
214 until a successor shall be elected and qualified as herein
215 provided.

216 The office of Governor shall be deemed vacant if the
217 Supreme Court of Appeals finds and declares that a Gov-
218 ernor in office is unable to discharge the duties of the
219 office by reason of his mental, physical, or other disability:
220 *Provided, however,* That such vacancy shall cease to exist
221 if, prior to the election of a person to fill the vacancy,
222 the court shall find and declare that the inability to dis-
223 charge the duties of the office by reason of his mental,
224 physical or other disability has ceased to exist.

225 Upon the filing of a verified petition in writing by one
226 third of the members elected to each House of the Legis-
227 lature, alleging valid and reasonable grounds for declar-
228 ing the office of Governor vacant or that the inability
229 which created a vacancy has ceased to exist, the Supreme
230 Court of Appeals shall have original jurisdiction, by quo
231 warrant or other appropriate proceedings, to hear and
232 determine questions concerning a vacancy in the office
233 of Governor. The court may proceed to hearing on such
234 petition and make such findings and determinations as
235 may be warranted. Such proceedings shall have preced-
236 ence over all other matters before the court, and may be
237 heard in a regular or special term. In the event the court
238 finds that a vacancy does or does not exist, a mandate
239 declaratory thereof shall be issued by the court. The
240 provisions of this section may be implemented by rules
241 of court, but no rule shall impede or unnecessarily delay
242 the expeditious hearing and determination herein con-
243 templated.

244 **Sec. 15. Other Elective Office Vacancies.**—In the event
245 of a vacancy in the office of Attorney General, Auditor,
246 Commissioner of Agriculture, Secretary of State or Treas-
247 urer resulting from death, resignation, or removal of the
248 person in office, or the death of the person elected to
249 the office, or from any other cause, the Governor shall
250 nominate and, by and with the advice and consent of
251 the Senate (a majority of all the Senators elected con-
252 curring by yeas and nays), appoint a person to fill the

253 vacancy. The appointee shall, upon qualifying, hold the
254 office, unless he be removed, until his successor shall be
255 appointed, or elected, and qualified.

256 **Sec. 16. Elections to Fill Vacancies.**—Whenever a va-
257 cancy shall occur in the office of Governor, Attorney Gen-
258 eral, Auditor, Commissioner of Agriculture, Secretary of
259 State or Treasurer, a successor shall be elected to fill the
260 unexpired term at the general election next succeeding
261 the vacancy, unless the vacancy shall occur within sixty
262 days immediately preceding such general election, in
263 which case a successor shall not be elected to fill the
264 unexpired term.

265 Notwithstanding the provisions of section three of this
266 article, the returns of an election for any such officer for
267 an unexpired term shall be directed to an officer pre-
268 scribed by law who shall open and publish the returns,
269 and declare the results in such manner as may be provided
270 by law: *Provided, however,* That if two or more candi-
271 dates have the highest and equal number of votes for the
272 same office, one of them shall be chosen and declared
273 elected to the office by joint vote of a majority of the
274 members of both Houses of the Legislature in the regular
275 or extraordinary session next succeeding the election.

276 **Sec. 17. Vacancies Filled in Recess of Legislature.**—In
277 the event of a vacancy, during a recess of the Senate,
278 in any office the appointment to which requires confirma-
279 tion by the Senate, the Governor shall appoint a person
280 to such office, who, upon qualifying, shall hold the office,
281 unless he be removed, for the time herein provided.

282 The nomination of the person thus appointed during a
283 recess shall be deemed made to the Senate by the Gov-
284 ernor at the time of the appointment, unless the nomina-
285 tion be withdrawn by the Governor prior to confirmation
286 by the Senate. A person so nominated, when confirmed
287 by the Senate (a majority of all the Senators elected
288 concurring by yeas and nays), shall hold the office during
289 the remainder of the term, unless he be removed, and
290 until his successor shall be appointed, or elected, and
291 qualified. If such an interim appointment is not confirmed,
292 it shall expire upon the adjournment of the regular or

293 extraordinary session of the Legislature next after the
294 appointment or when the appointee has been rejected by
295 the Senate, whichever shall first occur.

296 If a vacancy in any such office shall exist during a
297 regular or extraordinary session of the Legislature, the
298 Governor shall, if practicable, forward to the Senate be-
299 fore its adjournment the name of the person nominated
300 to fill such vacancy.

301 No person, after being rejected by the Senate, shall be
302 again nominated for the same office, during the same
303 session, unless at the request of the Senate; nor shall a
304 person, whose nomination for an office failed to be con-
305 firmed, be eligible, prior to the next regular session of the
306 Legislature, for an interim appointment to the same
307 office.

308 **Sec. 18. Budget and Supplementary Appropriation Bills.**

309 —The Legislature shall not appropriate any money out of
310 the treasury except in accordance with the provisions of
311 this section.

312 **Sub-Section A—Appropriation Bills**

313 (1) Every appropriation bill shall be either a budget
314 bill, or a supplementary appropriation bill, as hereinafter
315 provided.

316 **Sub-Section B—Budget Bills**

317 (2) Within ten days after the convening of the regular
318 session of the Legislature in odd-numbered years, unless
319 such time shall be extended by the Legislature, and on
320 the second Wednesday of January in even-numbered
321 years, the Governor shall submit to the Legislature a
322 budget for the next ensuing fiscal year. The budget shall
323 contain a complete plan of proposed expenditures and
324 estimated revenues for the fiscal year and shall show the
325 estimated surplus or deficit of revenues at the end of the
326 fiscal year. Accompanying each budget shall be a state-
327 ment showing: (a) An estimate of the revenues and ex-
328 penditures for the current fiscal year, including the actual
329 revenues and actual expenditures to the extent available,
330 and the revenues and expenditures for the next preceding

331 fiscal year; (b) the current assets, liabilities, reserves and
332 surplus or deficit of the State; (c) the debts and funds
333 of the State; (d) an estimate of the State's financial con-
334 dition as of the beginning and end of the fiscal year
335 covered by the budget; (e) any explanation the Governor
336 may desire to make as to the important features of the
337 budget and any suggestions as to methods for reduction
338 or increase of the State's revenue.

339 (3) Each budget shall embrace an itemized estimate
340 of the appropriations, in such form and detail as the
341 Governor shall determine or as may be prescribed by
342 law, (a) for the Legislature as certified to the Governor in
343 the manner hereinafter provided; (b) for the executive
344 department; (c) for the judiciary department, as pro-
345 vided by law, certified to the Governor by the Auditor;
346 (d) for payment and discharge of the principal and in-
347 terest of any debt of the State created in conformity with
348 the Constitution, and all laws enacted in pursuance there-
349 of; (e) for the salaries payable by the State under the
350 Constitution and laws of the State; (f) for such other
351 purposes as are set forth in the Constitution and in laws
352 made in pursuance thereof.

353 (4) The Governor shall deliver to the presiding officer
354 of each House the budget and a bill for all the proposed
355 appropriations of the budget clearly itemized and classi-
356 fied, in such form and detail as the Governor shall de-
357 termine or as may be prescribed by law; and the presiding
358 officer of each House shall promptly cause the bill to be
359 introduced therein, and such bill shall be known as the
360 'Budget Bill'. The Governor may, with the consent of the
361 Legislature, before final action thereon by the Legislature,
362 amend or supplement the budget to correct an oversight,
363 or to provide funds contingent on passage of pending
364 legislation, and in case of an emergency, he may deliver
365 such an amendment or supplement to the presiding officers
366 of both Houses; and the amendment or supplement shall
367 thereby become a part of the budget bill as an addition
368 to the items of the bill or as a modification of or a sub-
369 stitute for any item of the bill the amendment or supple-
370 ment may affect.

371 (5) The Legislature shall not amend the budget bill so
372 as to create a deficit but may amend the bill by increasing
373 or diminishing the items therein: *Provided, however*, That
374 the Legislature shall not increase the estimate of revenues
375 submitted in the budget without the approval of the Gov-
376 ernor: *Provided further*, That, except as otherwise pro-
377 vided in this Constitution, the salary or compensation of
378 any public officer shall not be increased or diminished
379 during his term of office; and the bill when and as passed
380 by both Houses shall be law immediately without further
381 action by the Governor.

382 (6) The Governor and such representatives of the ex-
383 ecutive departments, boards, officers and commissions of
384 the State expending or applying for state moneys as have
385 been designated by the Governor for this purpose, shall
386 have the right, and when requested by either House of
387 the Legislature it shall be their duty, to appear and be
388 heard with respect to any budget bill, and to answer
389 inquiries relative thereto.

390 **Sub-Section C—Supplementary Appropriation Bills**

391 (7) Neither House shall consider other appropriations
392 for the next ensuing fiscal year until the budget bill for
393 such year has been finally acted upon by both Houses,
394 and no such other appropriations whether supplementing
395 the budget for a current fiscal year or the next ensuing
396 fiscal year, shall be valid except in accordance with the
397 provisions following: (a) Every such appropriation shall
398 be embodied in a separate bill limited to some single work,
399 object or purpose therein stated and called therein a
400 supplementary appropriation bill; (b) each supplementary
401 appropriation bill shall provide the revenue necessary to
402 pay the appropriation thereby made by a tax, direct or
403 indirect, to be laid and collected as shall be directed in
404 the bill unless it appears from such budget that there is
405 sufficient revenue available; (c) no supplementary appro-
406 priation bill shall become a law unless it be passed in
407 each House by a vote of a majority of the members pres-
408 ent, and the yeas and nays recorded on its final passage.
409 Each supplementary appropriation bill shall be presented
410 to the Governor of the State as provided in section twelve

411 of this article and thereafter all the provisions of that
412 section shall apply.

413 **Sub-Section D—General Provisions**

414 (8) If the budget bill shall not have been finally acted
415 upon by the Legislature three days before the expiration
416 of its regular session, the Governor shall issue a proclama-
417 tion extending the session for such further period as may,
418 in his judgment, be necessary for the passage of the bill;
419 but no matter other than the bill shall be considered dur-
420 ing the extended session except a provision for the cost
421 thereof.

422 (9) For the purpose of making up the budget, the Gov-
423 ernor shall have the power, and it shall be his duty, to
424 require from the proper state officials, including herein
425 all executive departments, all executive and administra-
426 tive officers, bureaus, boards, commissions and agencies
427 expending or supervising the expenditure of, and all in-
428 stitutions applying for state moneys and appropriations,
429 such itemized estimates and other information, in such
430 form and at such times as he shall direct. The estimates
431 for the legislative department, certified by the presiding
432 officer of each House, and for the judiciary, as provided
433 by law, certified by the Auditor, shall be transmitted to
434 the Governor in such form and at such times as he shall
435 direct, and shall be included in the budget.

436 (10) The Governor may provide for public hearings
437 on all estimates and may require the attendance at such
438 hearings of representatives of all agencies and all insti-
439 tutions applying for state moneys. After such public
440 hearings he may, in his discretion, revise all estimates
441 except those for the legislative and judiciary departments.

442 (11) The Legislature may, from time to time, enact
443 such laws, not inconsistent with this section, as may be
444 necessary and proper to carry out its provisions.

445 (12) In the event of any inconsistency between any of
446 the provisions of this section and any of the other pro-
447 visions of the Constitution, the provisions of this section
448 shall prevail. But nothing herein shall be construed as
449 preventing the Governor from calling extraordinary ses-

450 sions of the Legislature, as provided by section eight of
451 this article, or as preventing the Legislature at such ex-
452 traordinary sessions from considering any emergency ap-
453 propriation or appropriations.

454 (13) If any item of any appropriation bill passed under
455 the provisions of this section shall be held invalid upon
456 any ground, such invalidity shall not affect the legality
457 of the bill or of any other item of such bill or bills."

**Sec. 2. Amendment to Be Known as the "State Executive
2 and Budget Amendment".**—For convenience in refer-
3 ring to said proposed amendment, and in the prepara-
4 tion of the form of the ballot hereinafter provided for,
5 said proposed amendment is hereby designated as the
6 "State Executive and Budget Amendment".

Sec. 3. Form of Ballot; Election.—For the purpose of
2 enabling the voters of the state to vote on the question of
3 said proposed amendment to the constitution at the said
4 general election to be held in the year one thousand nine
5 hundred sixty-two, the board of ballot commissioners of
6 each county is hereby required to place upon, and at
7 the foot of, the official ballot to be voted at that election,
8 the following:

9 Ballot on "State Executive and Budget Amendment".

10 ☐ For ratification of State Executive and Budget
11 Amendment.

12 ☐ Against ratification of State Executive and Budget
13 Amendment.

14 The said election on the proposed amendment at each
15 place of voting shall be superintended, conducted and
16 returned, and the result thereof ascertained by the same
17 officers and in the same manner as the election of officers
18 to be voted for at said election, and all the provisions of
19 the law relating to general elections, including all duties
20 to be performed by any officer or board, as far as prac-
21 ticable, and not inconsistent with anything herein con-
22 tained, shall apply to the election held under the pro-
23 visions of this act, except when it is herein otherwise pro-
24 vided. The ballots cast on the question of said proposed
25 amendment shall be counted as other ballots cast at said
26 election.

Sec. 4. Certificates of Election Commissioners; Canvass

2 **of Vote; Certifying Result.**—As soon as the result is ascer-
3 tained, the commissioners, or a majority of them, and the
4 canvassers (if there be any), or a majority of them, at
5 each place of voting, shall make out and sign two cer-
6 tificates thereof in the following form or the following
7 effect:

8 “We, the undersigned, who acted as commissioners (or
9 canvassers, as the case may be) of the election held at
10 precinct No. _____, in the district of _____,
11 in the county of _____, on
12 the _____ day of _____, one thou-
13 sand nine hundred sixty-two, upon the question of the
14 ratification or rejection of the proposed constitutional
15 amendment, do hereby certify that the result of said elec-
16 tion is as follows:

17 “For ratification of State Executive and Budget Amend-
18 ment _____ votes.

19 “Against ratification of State Executive and Budget
20 Amendment _____ votes.

21 “Given under our hands this _____ day of _____,
22 one thousand nine hundred sixty-two.”

23 The said two certificates shall correspond with each
24 other in all respects and contain the full and true returns
25 in said election at each place of voting on said question.
26 The said commissioners, or any one of them (or said
27 canvassers or any one of them, as the case may be), shall,
28 within four days, excluding Sunday, after that on which
29 said election was held, deliver one of said certificates to
30 the clerk of the county court of his county, together with
31 the ballots, and the other to the clerk of the circuit court
32 of the county.

33 The said certificates, together with the ballots cast on
34 the question of said proposed amendment, shall be laid
35 before the commissioners of the county court at the court-
36 house at the same time the ballots, poll books, and the
37 certificates of election of the members of the Legislature
38 are laid before them; and as soon as the result of said
39 election in the county upon the question of such ratifica-
40 tion or rejection is ascertained, two certificates of such

41 result shall be made out and signed by said commissioners
42 as a board of canvassers, in the form or to the following
43 effect:

44 "We, the board of canvassers of the county of _____
45 _____, having carefully and impartially ex-
46 amined the returns of the election held in said county,
47 in each district thereof, on the _____ day of November,
48 one thousand nine hundred sixty-two, do certify that the
49 results of the election in said county, on the question of
50 the ratification or rejection of the proposed amendment is
51 as follows:

52 "For ratification of State Executive and Budget Amend-
53 ment _____ votes.

54 "Against ratification of State Executive and Budget
55 Amendment _____ votes.

56 "Given under our hands this _____ day of _____
57 _____, one thousand nine hundred sixty-two."

58 One of the certificates shall be filed in the office of the
59 clerk of the county court, and the other forwarded by
60 mail to the secretary of state, who shall file and preserve
61 the same until the day on which the result of said elec-
62 tion in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to
5 ascertain therefrom the result of said election in the
6 state, and declare the same by proclamation published
7 in one or more newspapers printed in the seat of govern-
8 ment. If a majority of the votes cast at said election upon
9 said question be for ratification of said amendment, the
10 proposed amendment so ratified shall be in force and
11 effect from and after the time of such ratification, as part
12 of the constitution of the state.

Sec. 6. Publication of Proposed Amendment by Gov-

2 **ernor.**—The governor shall cause the said proposed amend-
3 ment, with the proper designation for the same as herein-
4 before adopted, to be published one time at least three
5 months before such election in some newspaper in every

6 county in which a newspaper is printed, at a price to be
7 agreed upon in advance, in writing, and the cost of such
8 advertising shall in the first instance, if found neces-
9 sary by him, be paid out of the governor's contingent fund
10 and be afterwards repaid to such fund by appropriation
11 of the Legislature.

CHAPTER 4

(House Bill No. 68—By Mr. Cruikshank and Mr. Myles)

[Passed February 5, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending section three of article nine thereof, relating to terms of office of sheriff.

Be it enacted by the Legislature of West Virginia:

Sheriffs' Succession Amendment

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Sheriffs' Succession Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Section 1. Submitting an Amendment to the State Constitution.—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:
That section three of article nine of the constitution of West Virginia be amended to read as follows:

"Section 3. Sheriffs; More Than Two Consecutive Terms Prohibited.—Without limitation on the number of non-

13 consecutive terms, the same person shall not serve as
14 sheriff by election or appointment for more than two
15 consecutive terms, or any part thereof; nor shall any
16 person who acted as a deputy at any time during the
17 preceding four years be elected or appointed sheriff, nor
18 shall any sheriff act as deputy of his successor; nor shall
19 he, during his term of service, or within one year there-
20 after, be eligible to any other office. The retiring sheriff
21 shall finish all business remaining in his hands, at the
22 expiration of his term; for which purpose his commission
23 and official bond shall remain in force. The duties of the
24 office of sheriff shall be performed by him in person, or
25 under his superintendence."

**Sec. 2. Amendment to Be Known as the "Sheriffs' Suc-
cession Amendment".**—For convenience in referring to
said proposed amendment, and in the preparation of the
form of the ballot hereinafter provided for, said proposed
amendment is hereby designated as the "Sheriffs' Suc-
cession Amendment".

Sec. 3. Form of Ballot; Election.—For the purpose of
enabling the voters of the state to vote on the question of
said proposed amendment to the constitution at the said
general election to be held in the year one thousand nine
hundred sixty-two, the board of ballot commissioners of
each county is hereby required to place upon, and at
the foot of, the official ballot to be voted at that election,
the following:

Ballot on "Sheriffs' Succession Amendment".

- ☐ For ratification of Sheriffs' Succession Amendment.
☐ Against ratification of Sheriffs' Succession Amend-
ment.

The said election on the proposed amendment at each
place of voting shall be superintended, conducted and
returned, and the result thereof ascertained by the same
officers and in the same manner as the election of officers
to be voted for at said election, and all the provisions of
the law relating to general elections, including all duties
to be performed by any officer or board, as far as prac-
ticable, and not inconsistent with anything herein con-
tained, shall apply to the election held under the pro-

visions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

Sec. 4. Certificates of Election Commissioners; Canvass of Vote; Certifying Result.—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

“We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at precinct No., in the district of, in the county of, on the day of, one thousand nine hundred sixty-two, upon the question of the ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election is as follows:

“For ratification of Sheriffs’ Succession Amendment votes.

“Against ratification of Sheriffs’ Succession Amendment votes.

“Given under our hands this day of, one thousand nine hundred sixty-two.”

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court at the courthouse at the same time the ballots, poll books, and the

37 certificates of election of the members of the Legislature
38 are laid before them; and as soon as the result of said
39 election in the county upon the question of such ratifica-
40 tion or rejection is ascertained, two certificates of such
41 result shall be made out and signed by said commissioners
42 as a board of canvassers, in the form or to the following
43 effect:

44 "We, the board of canvassers of the county of _____
45 _____, having carefully and impartially ex-
46 amined the returns of the election held in said county,
47 in each district thereof, on the _____ day of November,
48 one thousand nine hundred sixty-two, do certify that the
49 results of the election in said county, on the question of
50 the ratification or rejection of the proposed amendment
51 is as follows:

52 "For ratification of Sheriffs' Succession Amendment
53 _____votes.

54 "Against ratification of Sheriffs' Succession Amend-
55 ment _____votes.

56 "Given under our hands this _____ day of _____
57 _____, one thousand nine hundred sixty-two."

58 One of the certificates shall be filed in the office of the
59 clerk of the county court, and the other forwarded by
60 mail to the secretary of state, who shall file and preserve
61 the same until the day on which the result of said elec-
62 tion in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to
5 ascertain therefrom the result of said election in the
6 state, and declare the same by proclamation published
7 in one or more newspapers printed in the seat of govern-
8 ment. If a majority of the votes cast at said election upon
9 said question be for ratification of said amendment, the
10 proposed amendment so ratified shall be in force and
11 effect from and after the time of such ratification, as part
12 of the constitution of the state.

Sec. 6. Publication of Proposed Amendment by Gov-

2 **ernor.**—The governor shall cause the said proposed amend-

3 ment, with the proper designation for the same as herein-
4 before adopted, to be published one time at least three
5 months before such election in some newspaper in every
6 county in which a newspaper is printed, at a price to be
7 agreed upon in advance, in writing, and the cost of such
8 advertising shall be in the first instance, if found neces-
9 sary by him, be paid out of the governor's contingent fund
10 and be afterwards repaid to such fund by appropriation
11 of the Legislature.

CHAPTER 5

(House Bill No. 63—By Mr. White)

[Passed February 8, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, repealing sections six, eight and nine, and amending sections two, seven and ten of article six thereof, relating to the composition of the Senate and House of Delegates and to representation and apportionment of members of the House of Delegates.

Be it enacted by the Legislature of West Virginia:

Fair Representation Amendment

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Fair Representation Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of votes; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Section 1. Submitting an Amendment to the State Constitution.—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general

7 election, to be held in the year one thousand nine hun-
8 dred sixty-two, which proposed amendment is as follows:

9 That article six of the Constitution be amended by re-
10 pealing sections six, eight and nine, and amending sec-
11 tions two, seven and ten thereof to read as follows:

12 **Composition of Senate and House of Delegates.**

13 Section 2. The Senate shall be composed of thirty-two
14 members, and the House of Delegates of one hundred
15 members, subject to be increased according to the provi-
16 sions of section ten of this article.

17 **Provision for Delegate Representation.**

18 Sec. 6. This section is hereby repealed.

19 **Delegate Apportionment after Census.**

20 Sec. 7. After every census the number of members of
21 which the House of Delegates is composed shall be appor-
22 tioned among the counties in accordance with the follow-
23 ing steps:

24 (1) Ascertain the ratio of representation for the House
25 of Delegates by dividing the whole population of the state
26 by the number of members of which the House is to con-
27 sist and rejecting the fraction of a unit, if any, resulting
28 from such division.

29 (2) Divide the population of every county which has
30 a population equal to or in excess of the ratio ascertained
31 in step (1) by said ratio, and assign to each such county
32 a number of Delegates equal to the quotient obtained by
33 this division, excluding the fractional remainder.

34 (3) Assign to each county having a population less than
35 the ratio ascertained in step (1) one Delegate.

36 (4) Any additional Delegates necessary to make up
37 the number of which the House is to consist shall then
38 be assigned on the basis of one Delegate each to those
39 counties having the largest fractions unrepresented as
40 determined in step (2), and not receiving a Delegate in
41 step (3).

42 **Designation of Delegate Districts.**

43 Sec. 8. This section is hereby repealed.

44 **Further Apportionments.**

45 Sec. 9. This section is hereby repealed.

46 **Arrangement of Senatorial Districts and Designation**
47 **and Apportionment of Delegates.**

48 Sec. 10. The arrangement of the Senatorial Districts,
49 and the designation of the number and apportionment
50 of Delegates shall, notwithstanding the provisions of sec-
51 tion twenty-two of this article, hereafter be declared by
52 law only in accordance with sections four and seven of
53 this article insofar as applicable at the first even-year
54 regular session of the Legislature following each succeed-
55 ing census taken by authority of the United States:
56 *Provided*, That said arrangement, designation and appor-
57 tionment following the census taken for the year one
58 thousand nine hundred sixty shall be declared by law as
59 aforesaid at the regular session of the Legislature to be
60 held in the year one thousand nine hundred sixty-three.

61 If the Legislature fails to declare the foregoing arrange-
62 ment, designation and apportionment three days before
63 the expiration of any such legislative session hereinabove
64 specified, the Governor may, and it shall be his duty to
65 issue a proclamation extending any such session for such
66 further period as may, in his judgment, be necessary for
67 the passage of legislation declaring such arrangement,
68 designation and apportionment; but no other matter shall
69 be considered during such extended session except a pro-
70 vision for the cost of the extended session, and the budget
71 bill, if said session is also extended for consideration of
72 the budget bill in accordance with the provisions of sec-
73 tion fifty-one of this article. The action of the Legislature
74 in declaring such arrangement, designation and appor-
75 tionment shall not be subject to veto by the Governor.

76 When so declared said arrangement, designation and
77 apportionment shall apply to the first and subsequent
78 general elections for members of the Legislature to be
79 thereafter held until again declared following the succeed-
80 ing census: *Provided*, That this provision shall not affect
81 the qualification or term of office of any member of the

82 Senate who was elected at the general election next
83 preceding the declaration of said arrangement.

Sec. 2. Amendment to Be Known as the "Fair Representation Amendment".—For convenience in referring to the said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, the said proposed amendment is hereby designated as the "Fair Representation Amendment".

Sec. 3. Form of Ballot; Election.—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

9 Ballot on "Fair Representation" Amendment

10 ☐ For ratification of Fair Representation Amendment.

11 ☐ Against ratification of Fair Representation Amend-
12 ment.

13 The said election on the proposed amendment at each
14 place of voting shall be superintended, conducted and re-
15 turned, and the result thereof ascertained by the same
16 officers and in the same manner as the election of officers
17 to be voted for at said election, and all the provisions of
18 the law relating to general elections, including all duties
19 to be performed by any officer or board, as far as practic-
20 able, and not inconsistent with anything herein contained,
21 shall apply to the election held under the provisions of
22 this act, except where it is herein otherwise provided.
23 The ballots cast on the question of said proposed amend-
24 ment shall be counted as other ballots cast at said election.

Sec. 4. Certificates of Election Commissioners; Canvass of Votes; Certifying Result.—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting shall make out and sign two certificates thereof in the following form or to the following effect:

8 "We, the undersigned, who acted as commissioners (or
9 canvassers, as the case may be) of the election held at
10 Precinct No. _____, in the District of _____, in
11 the County of _____, on the _____ day
12 of November, one thousand nine hundred sixty-two, upon
13 the question of the ratification or rejection of the pro-
14 posed constitutional amendment do hereby certify that
15 the result of the said election is as follows:

16 "For ratification of Fair Representation Amendment
17 _____ votes.

18 "Against ratification of Fair Representation Amendment
19 _____ votes.

20 "Given under our hands this _____ day of November,
21 one thousand nine hundred sixty-two."

22 The said two certificates shall correspond with each
23 other in all respects and contain the full and true returns
24 in said election at each place of voting on said question.
25 The said commissioners, or any one of them (or said
26 canvassers, or any one of them, as the case may be),
27 shall within four days, excluding Sunday, after that on
28 which said election was held, deliver one of said certifi-
29 cates to the clerk of the county court of his county,
30 together with the ballots, and the other to the clerk of
31 the circuit court of the county.

32 The said certificates together with the ballots cast on
33 the question of said proposed amendment, shall be laid
34 before the commissioners of the county court at the court-
35 house at the same time the ballots, poll books and the
36 certificates of election of the members of the Legislature
37 are laid before them; and as soon as the result of said
38 election in the county upon the question of such ratifi-
39 cation or rejection is ascertained, two certificates of each
40 result shall be made out and signed by said commissioners
41 as a board of canvassers in the form or to the following
42 effect:

43 "We, the board of canvassers of the County of _____
44 _____, having carefully and impartially examined
45 the returns of the election held in said county, in each
46 district thereof, on the _____ day of November, one
47 thousand nine hundred sixty-two, do certify that the

48 results of the election in said county, on the question of
49 the ratification or rejection of the proposed amendment
50 is as follows:

51 "For ratification of Fair Representation Amendment
52 votes.

53 "Against ratification of Fair Representation Amendment
54 votes.

55 "Given under our hands this day of
56, one thousand nine hundred sixty-two."

57 One of the certificates shall be filed in the office of the
58 clerk of the county court, and the other forwarded by
59 mail to the secretary of state, who shall file and preserve
60 the same until the day on which the result of the said
61 election in the state is to be ascertained as hereinafter
62 stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to
5 ascertain therefrom the result of said election in the state,
6 and to declare the same by proclamation published in
7 one or more newspapers printed in the seat of govern-
8 ment. If a majority of the votes cast at said election upon
9 said question be for ratification of said amendment, the
10 proposed amendment so ratified shall be in force and
11 effect from and after the time of such ratification, as
12 part of the constitution of the state.

Sec. 6. Publication of Proposed Amendment by Gover-

2 **nor.**—The governor shall cause the said proposed amend-
3 ment, with the proper designation for the same as here-
4 inbefore adopted, to be published one time at least three
5 months before such election in some newspaper in every
6 county in which a newspaper is printed, at a price to be
7 agreed upon in advance in writing, and the cost of such
8 advertising shall in the first instance, if found necessary
9 by him, be paid out of the governor's contingent fund
10 and be afterwards repaid to such fund by appropriation
11 of the Legislature.

CHAPTER 6

(Com. Sub. for Senate Bill No. 58—Originating in the
Senate Committee on the Judiciary)

[Passed February 8, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending sections thirteen, twenty-two and thirty-three, article six thereof, relating to eligibility to a seat in the Legislature, to the length of legislative sessions and the business which may be considered in thirty-day sessions, and to the compensation and expenses of members of the Legislature.

Be it enacted by the Legislature of West Virginia:

Legislative Amendment

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Legislative Amendment".
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Section 1. Submitting an Amendment to the State Constitution.—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:
That sections thirteen, twenty-two and thirty-three, article six of the constitution of West Virginia, be amended to read as follows:

"Section 13. Eligibility to Seat in Legislature.—No person holding a lucrative office or employment under the state, the United States, or any foreign government; no member of Congress; and no person who is sheriff, con-

16 stable, or clerk of any court of record, shall be eligible
17 to a seat in the Legislature.

18 **"Sec. 22. Length of Legislative Session.**—The regular
19 session of the Legislature held in the year one thousand
20 nine hundred sixty-three and every second year there-
21 after shall not exceed sixty days, and the regular session
22 held in the year one thousand nine hundred sixty-four
23 and every second year thereafter shall not exceed thirty
24 days. During any thirty-day session the Legislature shall
25 consider no other business than the annual budget bill,
26 revenue measures and such business as may be stated by
27 the Legislature on its own motion in a concurrent resolu-
28 tion adopted by a two-thirds vote of the members elected
29 to each house. All sessions may be extended by the con-
30 currence of two thirds of the members elected to each
31 house.

32 **"Sec. 33. Compensation and Expenses of Members.**—
33 Each member of the Legislature shall receive for his serv-
34 ices the sum of fifteen hundred dollars a year, and may
35 receive such additional sum, as may be provided by
36 statute, for expenses for actual attendance while the
37 Legislature is in session, and for mileage for one round
38 trip in connection with any session and for one round trip
39 in connection with attending a party caucus held in ad-
40 vance of the date of the assembly of the Legislature in
41 odd-numbered years for the purpose of selecting candi-
42 dates for offices of the two houses, the additional sum of
43 ten cents for each mile traveled in going to and returning
44 from the seat of government by the most direct route.
45 The Speaker of the House of Delegates and the President
46 of the Senate shall each receive an additional compensa-
47 tion of five dollars a day for each day served as presiding
48 officer. Any member of the Legislature may receive, from
49 appropriations for such purposes, compensation for serv-
50 ices rendered in the performance of interim committee
51 or commission assignments. Notwithstanding any other
52 provision of the constitution, the compensation and ex-
53 penses herein provided for shall be paid to each member
54 of the Legislature on and after the adoption of this amend-
55 ment."

Sec. 2. Amendment to Be Known as the "Legislative Amendment".—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the "Legislative Amendment".

Sec. 3. Form of Ballot; Election.—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred sixty-two, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

Ballot on "Legislative Amendment".

☐ For ratification of Legislative Amendment.

☐ Against ratification of Legislative Amendment.

The said election on the proposed amendment at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election, and all the provisions of the law relating to general elections, including all duties to be performed by any officer or board, as far as practicable, and not inconsistent with anything herein contained, shall apply to the election held under the provisions of this act, except when it is herein otherwise provided. The ballots cast on the question of said proposed amendment shall be counted as other ballots cast at said election.

Sec. 4. Certificates of Election Commissioners; Canvass of Vote; Certifying Result.—As soon as the result is ascertained, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof in the following form or the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be) of the election held at Precinct No., in the district of, in the

11 county of _____, on the _____ day of _____,
12 one thousand nine hundred sixty-two, upon the question
13 of the ratification or rejection of the proposed constitu-
14 tional amendment, do hereby certify that the result of said
15 election is as follows:

16 "For ratification of Legislative Amendment _____ votes.

17 "Against ratification of Legislative Amendment _____
18 votes.

19 "Given under our hands this _____ day of _____,
20 one thousand nine hundred sixty-two."

21 The said two certificates shall correspond with each
22 other in all respects and contain the full and true returns
23 in said election at each place of voting on said question.
24 The said commissioners, or any one of them (or said
25 canvassers or any one of them, as the case may be), shall,
26 within four days, excluding Sunday, after that on which
27 said election was held, deliver one of said certificates to
28 the clerk of the county court of the county, together with
29 the ballots, and the other to the clerk of the circuit court
30 of the county.

31 The said certificates, together with the ballots cast on
32 the question of said proposed amendment, shall be laid
33 before the commissioners of the county court at the court-
34 house at the same time the ballots, poll books and the
35 certificates of election of the members of the Legislature
36 are laid before them; and as soon as the result of said
37 election in the county upon the question of such ratifica-
38 tion or rejection is ascertained, two certificates of such
39 result shall be made out and signed by said commissioners
40 as a board of canvassers, in the form or to the following
41 effect:

42 "We, the board of canvassers of the county of _____,
43 having carefully and impartially examined the returns
44 of the election held in said county, in each district thereof,
45 on the _____ day of November, one thousand nine hun-
46 dred sixty-two, do certify that the results of the election
47 in said county, on the question of the ratification or re-
48 jection of the proposed amendment is as follows:

49 "For ratification of Legislative Amendment _____ votes.

50 "Against ratification of Legislative Amendment _____
51 votes.

52 "Given under our hands this day of
53 one thousand nine hundred sixty-two."

54 One of the certificates shall be filed in the office of the
55 clerk of the county court, and the other forwarded by
56 mail to the secretary of state, who shall file and preserve
57 the same until the day on which the result of said election
58 in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to
5 ascertain therefrom the result of said election in the state,
6 and declare the same by proclamation published in one
7 or more newspapers printed in the seat of government.
8 If a majority of the votes cast at said election upon said
9 question be for ratification of said amendment, the pro-
10 posed amendment so ratified shall be in force and effect
11 from and after the time of such ratification, as part of the
12 constitution of the state.

Sec. 6. Publication of Proposed Amendment by Gov-
2 **ernor.**—The governor shall cause the said proposed
3 amendment, with the proper designation for the same as
4 hereinbefore adopted, to be published one time at least
5 three months before such election in some newspaper in
6 every county in which a newspaper is printed, at a price
7 to be agreed upon in advance, in writing, and the cost of
8 such advertising shall in the first instance, if found neces-
9 sary by him, be paid out of the governor's contingent fund
10 and be afterwards repaid to such fund by appropriation
11 of the Legislature.

CHAPTER 7

(House Bill No. 6—By Mr. Speaker, Mr. Singleton)

[Passed January 26, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chap-
ter thirty-one of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the powers of banking institutions and in particular authorizing a banking institution organized under said chapter thirty-one to invest up to two per cent of its capital and surplus in the capital stock of small business investment companies licensed under an act of Congress known as the "Small Business Investment Act of 1958", as amended.

Be it enacted by the Legislature of West Virginia:

That section six, article four, 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 4. Banking Institutions

Section

6. Powers of banking institutions defined.

Section 6. Powers of Banking Institutions Defined.—

2 Any banking institution, organized under this chapter,
3 shall have and exercise all of the powers necessary for, or
4 incidental to, the business of banking, and, without lim-
5 iting or restricting such general powers, it shall have the
6 right to buy or discount promissory notes, and bonds, ne-
7 gotiate drafts, bills of exchange and other evidences of
8 indebtedness, borrow money, receive deposits on such
9 terms and conditions as its officers may prescribe, buy and
10 sell exchange, bank notes, bullion or coin, loan money on
11 personal or other security, rent safety deposit boxes, and
12 receive on deposit, for safekeeping, jewelry, plate, stocks,
13 bonds and personal property of whatsoever description.
14 Any banking institution may accept, for payment at a fu-
15 ture date, drafts drawn upon it by its customers, and is-
16 sue letters of credit authorizing the holders thereof to
17 draw drafts upon it or its correspondents, at sight or on
18 time, not exceeding one year.

19 Any banking institution organized under this chapter
20 may hereafter invest in the capital stock of small business
21 investment companies chartered under the laws of this
22 state, which are licensed under the act of Congress known
23 as the "Small Business Investment Act of 1958", as
24 amended: *Provided*, That in no event shall any such bank
25 hold shares in small business investment companies in

26 any amount aggregating more than two per cent of the
27 combined capital and surplus of such banking institution.

28 Any banking institution may acquire, own, hold, use
29 and dispose of, real estate, which shall in no case be car-
30 ried on its books at a value greater than the actual cost,
31 subject to the following limitations and for the following
32 purposes:

33 (a) Such as shall be necessary for the convenient trans-
34 action of its business, including, in the same building with
35 its office or banking room, other offices or apartments to
36 rent as a source of income; such investment hereafter
37 made shall not exceed sixty-five per cent of the amount
38 of its capital stock and surplus, unless the consent in writ-
39 ing of the commissioner of banking is first secured;

40 (b) Such as shall be mortgaged to it in good faith as
41 security for debts in its favor;

42 (c) Such as shall be conveyed to it in satisfaction of
43 debts previously contracted in the course of its business
44 dealings;

45 (d) Such as it shall purchase at sales under judgments,
46 decrees, trust deeds or mortgages in its favor, or shall
47 purchase at private sale, to secure and effectuate the pay-
48 ment of debts due to it;

49 (e) The value at which any real estate is held shall not
50 be increased by the addition thereto of taxes, insurance,
51 interest, ordinary repairs, or other charges which do not
52 materially enhance the value of the property.

53 Any real estate acquired by any banking institution un-
54 der clauses (c) and (d) shall be disposed of by the bank-
55 ing institution at the earliest practicable date; but the
56 officers thereof shall have a reasonable discretion in the
57 matter of the time to dispose of such property in order to
58 save the banking institution from unnecessary losses:
59 *Provided*, That such property shall be disposed of within
60 five years from the time it is acquired by the banking in-
61 stitution unless an extension of time is given in writing
62 by the commissioner of banking.

63 No banking institution organized and authorized to
64 transact business under this chapter shall hereafter in-
65 vest more than twenty per cent of the amount of its cap-

66 ital and surplus in furniture and fixtures, whether the
67 same be installed in a building owned by such banking
68 institution, or in quarters leased by it.

CHAPTER 8

(Senate Bill No. 7—By Mr. Carson, Mr. President, and Mr. Riley)

[Passed January 29, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, seven, nine and eleven, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Industrial Development Authority.

Be it enacted by the Legislature of West Virginia:

That sections four, seven, nine and eleven, article fifteen, 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 15. West Virginia Industrial Development Authority.

Section

4. Definitions.
7. Loans to industrial development agencies.
9. Industrial development fund.
11. Moneys of the authority.

Section 4. Definitions.—The following terms, whenever used or referred to in this article, shall have the following meanings:

- (a) The term "authority" shall mean the public corporation created by this article.
- (b) The term "board" shall mean the governing body of the authority.
- (c) The term "county" shall mean any county of this state.
- (d) The term "critical economic area" shall mean the area encompassing any municipality or group of municipi-

12 palities, county, group of counties or region of the state
13 reasonably defined by the authority wherein critical
14 conditions of unemployment, economic depression, wide-
15 spread reliance on public assistance and unemployment
16 compensation are found to exist by the authority. Prior
17 to determination and designation of any area of the state
18 as a critical economic area, the authority shall conduct
19 such investigations of the area and of the records and
20 statistical indices of the department of employment se-
21 curity, department of labor, department of natural re-
22 sources, department of welfare and other applicable state
23 agencies, as well as the declarations and statistics of any
24 federal agencies as shall be necessary to establish the
25 existence of the above conditions in such area. No area
26 of the state shall be designated a critical economic area
27 without such investigations and findings having been
28 first made and certified to the permanent records of the
29 authority.

30 (e) The term "federal agency" shall mean and include
31 the United States of America, the president of the United
32 States of America, and any department of, or corporation,
33 agency or instrumentality heretofore or hereafter created,
34 designated or established by, the United States of
35 America.

36 (f) The term "government" shall mean the state and
37 federal governments, or any political subdivision, agency
38 or instrumentality, corporate or otherwise, of either of
39 them.

40 (g) The term "industrial development agency" shall
41 mean any incorporated organization, foundation, associa-
42 tion or agency, regardless of the particular name, and to
43 whose members or shareholders no profit shall inure,
44 which shall have as its primary function the promotion,
45 encouragement and development of industrial and manu-
46 facturing enterprises in a critical economic area.

47 (h) The term "industrial development fund" shall
48 mean the account created by section nine of this article.

49 (i) The term "industrial development project" shall
50 mean any site, structure, facility or undertaking com-
51 prising or being connected with or being a part of an in-
52 dustrial or manufacturing enterprise established or to be

53 established by an industrial development agency in a
54 critical economic area.

55 (j) The term "municipality" shall mean any city or
56 town of the state.

57 (k) The term "responsible buyer" shall mean any per-
58 son, partnership, firm, company or corporation organized
59 for profit deemed by the authority, after proper investi-
60 gation, to be financially responsible to assume all obliga-
61 tions prescribed by the authority in the acquisition of
62 an industrial development project from an industrial
63 development agency, and in the operation of an industrial
64 or manufacturing enterprise therein or thereon.

65 (l) The term "responsible tenant" shall mean any per-
66 son, partnership, firm, company or corporation organized
67 for profit deemed by the authority, after proper investi-
68 gation, to be financially responsible to assume all rental
69 and all other obligations prescribed by the authority in
70 the leasing of an industrial development project and in
71 the operation of an industrial or manufacturing enter-
72 prise therein or thereon.

73 (m) The words "cost of establishing an industrial de-
74 velopment project" shall embrace any or all of the fol-
75 lowing: The cost of construction, the cost of all lands,
76 property rights, easements, and in cases of demonstrated
77 need, machinery and equipment, if said demonstrated
78 need shall have been shown to the satisfaction of the
79 authority, which are deemed necessary for such construc-
80 tion, financing charges, interest prior to and during con-
81 struction, cost of engineering and legal expense, plans,
82 specifications, surveys, estimates of costs and other ex-
83 penses necessary or incident to determining the feasibility
84 or practicability of any industrial development project,
85 together with such other expenses as may be necessary
86 or incidental to the financing and the construction of the
87 industrial development project and the placing of the
88 same in operation.

Sec. 7. Loans to Industrial Development Agencies.—

2 When it has been determined by the authority upon
3 application of an industrial development agency and upon
4 hearing thereon in the manner hereinafter provided that

5 the establishment of a particular industrial development
6 project (of such industrial development agency) in a
7 critical economic area has accomplished or will accom-
8 plish the public purposes of this article, the authority
9 may contract to loan such industrial development agency
10 an amount not in excess of thirty per cent of the cost,
11 or estimated cost, of such industrial development project,
12 as established or to be established, subject, however, to
13 the following conditions:

14 (A) Industrial development projects to be established.

15 1. The authority shall have first determined that the
16 industrial development agency holds funds in an amount
17 equal to, or property of a value equal to, not less than
18 twenty per cent of the estimated cost of establishing the
19 industrial development project, which funds or property
20 are available for and shall be applied to the establish-
21 ment of such project; and

22 2. The authority shall have also determined that the
23 industrial development agency has obtained from other
24 independent and responsible sources, such as banks and
25 insurance companies or otherwise, a firm commitment
26 for all other funds, over and above the loan of the au-
27 thority and such funds or property as the industrial de-
28 velopment agency may hold, necessary for payment of
29 all the estimated cost of establishing the industrial de-
30 velopment project, and that the sum of all these funds
31 is adequate to insure completion and operation of the
32 industrial development project.

33 (B) Industrial development projects established with
34 initial authority loan participation.

35 1. The authority shall have first determined that the
36 industrial development agency has expended funds in
37 an amount equal to, or has applied property of a value
38 equal to, not less than twenty per cent of the cost of
39 establishing the industrial development project; and

40 2. The authority shall have also determined that the
41 industrial development agency obtained from other inde-
42 pendent and responsible sources, such as banks and in-
43 surance companies or otherwise, other funds necessary
44 for payment of all the cost of establishing the industrial
45 development project, and that the industrial development

46 agency participation and these funds, has been adequate
47 to insure completion and operation of the industrial de-
48 velopment project: *Provided, however,* That the proceeds
49 of any loan made by the authority to the industrial de-
50 velopment agency pursuant to this subsection (B) shall
51 be used only for the establishment of additional indus-
52 trial development projects in furtherance of the public
53 purposes of this article.

54 Any such loan of the authority shall be for such period
55 of time and shall bear interest at such rate as shall be
56 determined by the authority and shall be secured by
57 bond of the industrial development agency and by deed
58 of trust on the industrial development project for which
59 such loan was made, such deed of trust to be second and
60 subordinate only to the deed of trust securing the first
61 lien obligation issued to secure the commitment of funds
62 from the aforesaid independent and responsible sources
63 and used in the financing of the industrial development
64 project.

65 Moneys so loaned by the authority to industrial de-
66 velopment agencies shall be withdrawn from the indus-
67 trial development fund and paid over to the industrial
68 development agency in such manner as shall be provided
69 and prescribed by the rules and regulations of the au-
70 thority.

71 All payments of interest on said loans and the principal
72 thereof shall be deposited by the authority in the indus-
73 trial development fund.

74 Loans by the authority to an industrial development
75 agency for an industrial development project shall be
76 made only in the manner and to the extent as in this
77 section provided, except, however, in those instances
78 wherein an agency of the federal government participates
79 in the financing of an industrial development project by
80 loan, grant or otherwise of federal funds. When any
81 federal agency does so participate the authority may
82 adjust the required ratios of financial participation by
83 the industrial development agency, the source of inde-
84 pendent funds, and the authority in such manner as to
85 insure the maximum benefit available to the industrial
86 development agency, the authority, or both, by the par-

87 ticipation of the federal agency: *Provided, however,* That
88 no such adjustment of such ratios shall cause the au-
89 thority to grant a loan to the industrial development
90 agency in excess of thirty per cent of the cost or estimated
91 cost of the industrial development project.

92 Where any federal agency participating in the financ-
93 ing of an industrial development project is not permitted
94 to take as security for such participation a deed of trust
95 the lien of which is junior to the deed of trust of the
96 authority, the authority shall, in such instances, be au-
97 thorized to take as security for its loan to the industrial
98 development agency a deed of trust junior in lien to
99 that of the federal agency.

Sec. 9. Industrial Development Fund.—There is hereby
2 created a special account in the treasury of the state to
3 be known as the industrial development fund to which
4 shall be accredited any appropriation made by the Legis-
5 lature to the authority, as well as such other deposits
6 as in this section provided.

7 As often as may be necessary, the authority shall requi-
8 sition from the industrial development fund such amounts
9 as may be necessary to provide adequate funds for the
10 payment of the administration of the purposes of this
11 article. And whenever the authority determines it to be
12 necessary to purchase, at a foreclosure sale, any industrial
13 development project pursuant to section six (p) of this
14 article, in order to protect any loan theretofore made by
15 the authority, the authority may requisition from the
16 industrial development fund such amount as may be
17 necessary to pay the purchase price thereof, notwith-
18 standing the fact that the purchase price may exceed
19 thirty per cent of the original cost of the industrial de-
20 velopment project.

21 The authority shall also requisition, from time to time,
22 from the industrial development fund such amounts as
23 shall be allocated and appropriated by the authority for
24 loans to industrial development agencies for industrial
25 development projects. When and as the amounts so allo-
26 cated and appropriated by the authority as loans to in-
27 dustrial development agencies are repaid to the authority

28 pursuant to the terms of the mortgages and other agree-
29 ments made and entered into by the authority, the au-
30 thority shall pay such amounts into the industrial de-
31 velopment fund, it being the intent of this article that the
32 industrial development fund shall operate as a revolving
33 fund whereby all appropriations and payments made
34 thereto may be applied and reapplied to the purposes of
35 this article.

36 Whenever the authority shall determine that the bal-
37 ance in the industrial development fund is in excess of
38 the immediate requirements for loan purposes it may
39 request that such excess funds be invested until needed
40 for loan purposes, in which case such excess funds shall
41 be invested in the manner provided for the investment
42 of other temporary state funds. All interest earned on
43 the money invested pursuant to this section shall be
44 credited to the industrial development fund.

45 At any time that the authority shall determine that
46 funds held for the credit of the industrial development
47 fund are in excess of the amount needed by the authority
48 to carry out the purposes of this article, the authority shall
49 take such action as shall be required to release such ex-
50 cess from the industrial development fund and transfer
51 the same to the general fund of the state treasury.

Sec. 11. Moneys of the Authority.—All moneys accruing
2 to the authority from whatever source derived, except
3 legislative appropriations, shall be collected and received
4 by the treasurer of the authority, who shall pay same into
5 the state treasury in the manner required by section two,
6 article two, chapter twelve of the code of West Virginia,
7 as amended, which shall be credited to the special re-
8 volving account known as the industrial development
9 fund.

CHAPTER 9

(Com. Sub. for House Bill No. 50—Originating in the House Committee on Counties, Districts and Municipalities)

[Passed February 8, 1962; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five and sections five-(one) through five-(fifty-four), article one; section two and sections two-(one) through two-(fifty-two), section three and sections three-(one) through three-(fifty-two), and section four, article seven, all of chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of county commissioners, county clerks, circuit clerks and joint clerks of county and circuit courts.

Be it enacted by the Legislature of West Virginia:

That section five and sections five-(one) through five-(fifty-four), article one; section two and sections two-(one) through two-(fifty-two), section three and sections three-(one) through three-(fifty-two), and section four, article seven, all of 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

1. County Courts Generally.
7. Salaries; Deputies and Assistants and Their Salaries.

Article 1. County Courts Generally.

Section

5. Duties of county commissioners and payment for services other than services in court.
- 5-(1)—5-(54). Salaries of county commissioners of the various counties of the state.

Section 5. Duties of County Commissioners and Payment for Services Other than Services in Court.—It shall be the duty of the county commissioners of each county to visit each quarter and inspect institutions within their county for housing and caring for the poor, to inspect the jails, and to arrange for the feeding and care of the

7 prisoners therein, and to investigate the conditions of the
8 poor within their county, not housed within such insti-
9 tutions; to visit detention homes for children within their
10 counties, if any, and to visit and inspect bridges and
11 bridge approaches under their control; to provide for
12 and have general supervision over the repair and main-
13 tenance of the county courthouse, jails, houses for the
14 poor and other county property, so as to prevent the
15 undue deterioration thereof; to supervise and control
16 the maintenance and operation of airport or airports
17 owned and/or operated by the county court; and to super-
18 vise and control the purchase, erection and maintenance
19 of airport facilities; to supervise and control the purchase
20 of furniture, fixtures and equipment, and janitors' and
21 other supplies, for their county; to attend the annual
22 meeting of county assessors, and such district meetings
23 as may be called by the state tax commissioner, on mat-
24 ters pertaining to the work of the county assessors and
25 the county courts as boards of review and equalization;
26 to review and equalize the assessments made by the
27 assessors; to inspect and review the lists of property,
28 both real and personal, made up by the assessor and his
29 deputies for taxable purposes, and to point out to the
30 assessor any property, real or personal, which the said
31 assessors of their respective counties may have over-
32 looked or omitted to place on said tax lists; to call to the
33 attention of the assessor all real estate or personal prop-
34 erty belonging to churches, lodges, schools or other chari-
35 table institutions which may have been overlooked or
36 omitted by the assessor or his deputies in making up his
37 lists of property for entry on the land and personal prop-
38 erty books; to cooperate with the county public assist-
39 ance council and supervise the general management of
40 the fiscal affairs and business of each county; and as a
41 further part of their duties they shall be empowered to
42 purchase, lease, rent, control, supervise, inspect, main-
43 tain and erect public parks, playgrounds, and recreational
44 facilities, to purchase, lease or rent equipment therefor,
45 and to employ qualified recreational directors and per-
46 sonnel; to construct new Four-H camps on county prop-
47 erty; to operate stone quarries and sand deposits on

48 county-owned or leased property; to construct buildings
49 for or aid in constructing and/or equipping civilian de-
50 fense buildings on sites approved by state office of civilian
51 defense; and to operate dog pounds for county-munici-
52 palities; and as a further part of their duties they shall
53 be empowered to purchase, lease, rent, control, supervise,
54 inspect, maintain and erect public markets and to pur-
55 chase, rent or lease equipment therefor, and to employ
56 qualified personnel to operate such public markets.

57 Compensation shall be allowed and paid out of the
58 county treasury, in the same manner as salaries are paid,
59 to each county commissioner of each county (except as
60 otherwise provided by law for the county of Ohio), for
61 services performed for such county concerning the visit-
62 ing of the poor, inspection of jails, bridges and bridge
63 approaches, and for visiting detention homes for children;
64 and for providing for and supervising the repair and
65 maintenance of the county courthouse, jails, houses for
66 the poor, and other county property; for supervising and
67 controlling the maintenance and operation of airport or
68 airports owned by and/or operated by the county court,
69 and supervising and controlling the purchase, erection
70 and maintenance of airport facilities; and for supervising
71 and controlling the purchase of furniture, fixtures and
72 equipment and janitors' and other supplies of their coun-
73 ty; and for attending the annual meeting of assessors and
74 such district meetings as may be called by the state tax
75 commissioner, on matters pertaining to the work of
76 assessors and county courts as boards of review and
77 equalization; for reviewing and equalizing the assess-
78 ments made by the assessors; for inspecting and review-
79 ing the lists of property, both real and personal, made up
80 by the assessor and his deputies for taxable purposes, and
81 for pointing out to the assessor any property, real or
82 personal, which the said assessors of their respective
83 counties may have overlooked or omitted to place on said
84 tax lists; for calling to the attention of the assessor all
85 real estate or personal property belonging to churches,
86 lodges, schools or other charitable institutions which may
87 have been overlooked or omitted by the assessor or his
88 deputies in making up his lists of property for entry on

89 the land and personal property books; and for duties of
90 the county commissioners in cooperating with the county
91 public assistance council; for purchasing, leasing, renting,
92 controlling, supervising, inspecting, maintaining and
93 erecting public parks, playgrounds, and recreational fa-
94 cilities, and the purchasing, leasing, or renting the equip-
95 ment therefor, and employing qualified recreational di-
96 rectors and personnel therefor; for constructing new
97 Four-H camps on county property; operating stone quar-
98 ries and sand deposits on county-owned or leased prop-
99 erty; constructing buildings for or aiding in construction
100 and/or equipping civilian defense buildings on sites ap-
101 proved by state office of civilian defense; operating dog
102 pounds for county-municipalities; and as a further part
103 of their duties they shall be empowered to purchase,
104 lease, rent, control, supervise, inspect, maintain and erect
105 public markets and to purchase, rent or lease equipment
106 therefor, and to employ qualified personnel to operate
107 such public markets; for constructing fall-out shelters
108 and aiding individuals to construct fall-out shelters
109 through furnishing available information; and for super-
110 vising the general management of the fiscal affairs and
111 business of each county, within their counties, and other
112 business by such commissioners, in addition to compen-
113 sation for services in court, the sums of money herein-
114 after provided in the following sections five-(one) to
115 five-(fifty-four), inclusive.

Sec. 5-(1). Compensation of County Commissioners—
2 **Barbour County.**—For the county of Barbour, one hun-
3 dred dollars per month.

Sec. 5-(2). Same—Berkeley County.—For the county of
2 Berkeley, the president of the court one hundred sixty-
3 five dollars and other members of the court one hundred
4 forty dollars per month.

Sec. 5-(3). Same—Boone County.—For the county of
2 Boone, one hundred fifty dollars per month.

Sec. 5-(4). Same—Braxton County.—For the county of
2 Braxton, the president of the court eighty-five dollars
3 and the other members of the court seventy-five dollars
4 per month.

2 **Sec. 5-(5). Same—Brooke County.**—For the county of
2 Brooke, one hundred twenty-five dollars per month.

2 **Sec. 5-(6). Same—Cabell County.**—For the county of
2 Cabell, three hundred dollars per month.

2 **Sec. 5-(7). Same—Calhoun County.**—For the county of
2 Calhoun, fifty dollars per month.

2 **Sec. 5-(8). Same—Clay County.**—For the county of
2 Clay, seventy-five dollars per month.

2 **Sec. 5-(9). Same—Doddridge County.**—For the county
2 of Doddridge, eighty-five dollars per month.

2 **Sec. 5-(10). Same—Fayette County.**—For the county of
2 Fayette, two hundred fifty dollars per month.

2 **Sec. 5-(11). Same—Gilmer County.**—For the county
2 of Gilmer, seventy-five dollars per month.

2 **Sec. 5-(12). Same—Grant County.**—For the county of
2 Grant, sixty dollars per month.

2 **Sec. 5-(13). Same—Greenbrier County.**—For the county
2 of Greenbrier, one hundred twenty-five dollars per month.

2 **Sec. 5-(14). Same—Hampshire County.**—For the county
2 of Hampshire, the president of the court one hundred
3 dollars and the other members of the court seventy-five
4 dollars per month.

2 **Sec. 5-(15). Same—Hancock County.**—For the county
2 of Hancock, two hundred twenty-five dollars per month.

2 **Sec. 5-(16). Same—Hardy County.**—For the county of
2 Hardy, seventy-five dollars per month.

2 **Sec. 5-(17). Same—Harrison County.**—For the county
2 of Harrison, four hundred dollars per month.

2 **Sec. 5-(18). Same—Jackson County.**—For the county of
2 Jackson, one hundred dollars per month.

2 **Sec. 5-(19). Same—Jefferson County.**—For the county
2 of Jefferson, the president of the court one hundred
3 twenty-five dollars and the other members of the court
4 one hundred dollars per month.

Sec. 5-(20). Same—Kanawha County.—For the county
2 of Kanawha, six hundred twenty dollars per month.

Sec. 5-(21). Same—Lewis County.—For the county of
2 Lewis, one hundred forty dollars per month.

Sec. 5-(22). Same—Lincoln County.—For the county of
2 Lincoln, one hundred twenty-five dollars per month.

Sec. 5-(23). Same—Logan County.—For the county of
2 Logan, the president of the court three hundred fifty
3 dollars and the other members of the court two hundred
4 seventy-five dollars per month.

Sec. 5-(24). Same—Marion County.—For the county
2 of Marion, four hundred dollars per month.

Sec. 5-(25). Same—Marshall County.—For the county
2 of Marshall, one hundred dollars per month.

Sec. 5-(26). Same—Mason County.—For the county of
2 Mason, one hundred fifty dollars per month.

Sec. 5-(27). Same—McDowell County.—For the county
2 of McDowell, two hundred twenty-five dollars per month.

Sec. 5-(28). Same—Mercer County.—For the county of
2 Mercer, the president of the court three hundred fifty
3 dollars and the other members of the court three hundred
4 dollars per month.

Sec. 5-(29). Same—Mineral County.—For the county
2 of Mineral, the president of the court one hundred
3 twenty-five dollars and the other members of the court
4 one hundred dollars per month.

Sec. 5-(30). Same—Mingo County.—For the county of
2 Mingo, one hundred seventy-five dollars per month.

Sec. 5-(31). Same—Morgan County.—For the county of
2 Morgan, seventy-five dollars per month.

Sec. 5-(32). Same—Monroe County.—For the county of
2 Monroe, fifty dollars per month.

Sec. 5-(33). Same—Monongalia County.—For the coun-
2 ty of Monongalia, two hundred dollars per month.

2 **Sec. 5-(34). Same—Nicholas County.**—For the county
of Nicholas, seventy-five dollars per month.

2 **Sec. 5-(35). Same—Pendleton County.**—For the county
of Pendleton, the president of the court sixty-five dollars
3 and the other members of the court forty-five dollars per
4 month.

2 **Sec. 5-(36). Same—Pleasants County.**—For the county
of Pleasants, sixty-five dollars per month.

2 **Sec. 5-(37). Same—Pocahontas County.**—For the county
of Pocahontas, fifty dollars per month.

2 **Sec. 5-(38). Same—Preston County.**—For the county of
Preston, the president of the court seventy-five dollars
3 and other members of the court sixty dollars per month.

2 **Sec. 5-(39). Same—Putnam County.**—For the county of
Putnam, one hundred fifty dollars per month.

2 **Sec. 5-(40). Same—Raleigh County.**—For the county of
Raleigh, the president of the court two hundred fifty
3 dollars and other members of the court two hundred twen-
4 ty-five dollars per month.

2 **Sec. 5-(41). Same—Randolph County.**—For the county
of Randolph, one hundred twenty-five dollars per month.

2 **Sec. 5-(42). Same—Ritchie County.**—For the county
of Ritchie, sixty dollars per month.

2 **Sec. 5-(43). Same—Roane County.**—For the county of
Roane, ninety dollars per month.

2 **Sec. 5-(44). Same—Summers County.**—For the county
of Summers, seventy-five dollars per month.

2 **Sec. 5-(45). Same—Taylor County.**—For the county of
Taylor, fifty-five dollars per month.

2 **Sec. 5-(46). Same—Tucker County.**—For the county of
Tucker, fifty dollars per month.

2 **Sec. 5-(47). Same—Tyler County.**—For the county of
Tyler, eighty-five dollars per month.

2 **Sec. 5-(48). Same—Upshur County.**—For the county of
Upshur, one hundred dollars per month.

Sec. 5-(49). Same—Wayne County.—For the county of
2 Wayne, one hundred seventy-five dollars per month.

Sec. 5-(50). Same—Webster.—For the county of Web-
2 ster, seventy-five dollars per month.

Sec. 5-(51). Same—Wetzel County.—For the county
2 of Wetzel, one hundred thirty dollars per month.

Sec. 5-(52). Same—Wirt County.—For the county of
2 Wirt, forty dollars per month.

Sec. 5-(53). Same—Wood County.—For the county of
2 Wood, three hundred dollars per month.

Sec. 5-(54). Same—Wyoming County.—For the county
2 of Wyoming, two hundred dollars per month.

Article 7. Salaries; Deputies and Assistants and Their Salaries.
Section

2. Salaries of county clerks.
- 2-(1)—2-(52). Salaries of county clerks of the various counties of the
state.
3. Salaries of circuit clerks.
- 3-(1)—3-(52). Salaries of circuit clerks of the various counties of the
state.
4. Salaries of joint clerks of county and circuit courts.

Section 2. Salaries of County Clerks.—The annual com-
2 pensation of the clerk of the county court of each county
3 shall, on and after January one, one thousand nine hun-
4 dred sixty-three, be in the amounts set forth in sections
5 two-(one) to two-(fifty-two), inclusive, of this article.

Sec. 2-(1). Same—Barbour County.—For the county
2 of Barbour, three thousand six hundred dollars.

Sec. 2-(2). Same—Berkeley County.—For the county
2 of Berkeley, five thousand five hundred dollars.

Sec. 2-(3). Same—Boone County.—For the county of
2 Boone, five thousand five hundred dollars.

Sec. 2-(4). Same—Braxton County.—For the county of
2 Braxton, four thousand eight hundred dollars.

Sec. 2-(5). Same—Brooke County.—For the county of
2 Brooke, four thousand eight hundred dollars.

Sec. 2-(6). Same—Cabell County.—For the county of
2 Cabell, eight thousand four hundred dollars.

Sec. 2-(7). Same—Calhoun County.—For the county of
2 Calhoun, three thousand four hundred dollars.

Sec. 2-(8). Same—Clay County.—For the county of
2 Clay, three thousand nine hundred dollars.

Sec. 2-(9). Same—Doddridge County.—For the county
2 of Doddridge, three thousand six hundred dollars.

Sec. 2-(10). Same—Fayette County.—For the county
2 of Fayette, five thousand five hundred dollars.

Sec. 2-(11). Same—Gilmer County.—For the county of
2 Gilmer, four thousand two hundred dollars.

Sec. 2-(12). Same—Greenbrier County.—For the county
2 of Greenbrier, five thousand dollars.

Sec. 2-(13). Same—Hampshire County.—For the county
2 of Hampshire, not less than three thousand three hun-
3 dred dollars nor more than three thousand six hundred
4 dollars.

Sec. 2-(14). Same—Hancock County.—For the county
2 of Hancock, six thousand five hundred four dollars.

Sec. 2-(15). Same—Harrison County.—For the county
2 of Harrison, seven thousand dollars.

Sec. 2-(16). Same—Jackson County.—For the county
2 of Jackson, four thousand one hundred dollars.

Sec. 2-(17). Same—Jefferson County.—For the county
2 of Jefferson, four thousand five hundred dollars.

Sec. 2-(18). Same—Kanawha County.—For the county
2 of Kanawha, twelve thousand dollars.

Sec. 2-(19). Same—Lewis County.—For the county of
2 Lewis, four thousand dollars.

Sec. 2-(20). Same—Lincoln County.—For the county
2 of Lincoln, four thousand eight hundred dollars.

Sec. 2-(21). Same—Logan County.—For the county of
2 Logan, seven thousand two hundred dollars.

Sec. 2-(22). Same—Marion County.—For the county
2 of Marion, seven thousand two hundred dollars.

Sec. 2-(23). Same—Marshall County.—For the county
2 of Marshall, six thousand dollars.

Sec. 2-(24). Same—Mason County.—For the county
2 of Mason, four thousand eight hundred dollars.

Sec. 2-(25). Same—McDowell County.—For the county
2 of McDowell, six thousand eight hundred dollars.

Sec. 2-(26). Same—Mercer County.—For the county
2 of Mercer, seven thousand dollars.

Sec. 2-(27). Same—Mineral County.—For the county of
2 Mineral, five thousand dollars.

Sec. 2-(28). Same—Mingo County.—For the county of
2 Mingo, five thousand eight hundred dollars.

Sec. 2-(29). Same—Monongalia County.—For the coun-
2 ty of Monongalia, six thousand dollars.

Sec. 2-(30). Same—Monroe County.—For the county of
2 Monroe, three thousand dollars.

Sec. 2-(31). Same—Morgan County.—For the county
2 of Morgan, three thousand six hundred dollars.

Sec. 2-(32). Same—Nicholas County.—For the county
2 of Nicholas, four thousand three hundred dollars.

Sec. 2-(33). Same—Ohio County.—For the county of
2 Ohio, eight thousand four hundred dollars.

Sec. 2-(34). Same—Pleasants County.—For the county
2 of Pleasants, three thousand eight hundred dollars.

Sec. 2-(35). Same—Pocahontas County.—For the county
2 of Pocahontas, three thousand six hundred dollars.

Sec. 2-(36). Same—Preston County.—For the county
2 of Preston, five thousand dollars.

Sec. 2-(37). Same—Putnam County.—For the county
2 of Putnam, four thousand eight hundred dollars.

Sec. 2-(38). Same—Raleigh County.—For the county of
2 Raleigh, seven thousand dollars.

Sec. 2-(39). Same—Randolph County.—For the county
2 of Randolph, six thousand dollars.

2 **Sec. 2-(40). Same—Ritchie County.**—For the county
2 of Ritchie, three thousand six hundred dollars.

2 **Sec. 2-(41). Same—Roane County.**—For the county of
2 Roane, four thousand two hundred dollars.

2 **Sec. 2-(42). Same—Summers County.**—For the county
2 of Summers, three thousand six hundred dollars.

2 **Sec. 2-(43). Same—Taylor County.**—For the county
2 of Taylor, three thousand two hundred dollars.

2 **Sec. 2-(44). Same—Tucker County.**—For the county of
2 Tucker, three thousand two hundred dollars.

2 **Sec. 2-(45). Same—Tyler County.**—For the county of
2 Tyler, three thousand six hundred dollars.

2 **Sec. 2-(46). Same—Upshur County.**—For the county
2 of Upshur, three thousand six hundred dollars.

2 **Sec. 2-(47). Same—Wayne County.**—For the county
2 of Wayne, five thousand nine hundred dollars.

2 **Sec. 2-(48). Same—Webster County.**—For the county
2 of Webster, four thousand dollars.

2 **Sec. 2-(49). Same—Wetzel County.**—For the county
2 of Wetzel, five thousand two hundred dollars.

2 **Sec. 2-(50). Same—Wirt County.**—For the county of
2 Wirt, two thousand four hundred dollars.

2 **Sec. 2-(51). Same—Wood County.**—For the county of
2 Wood, six thousand dollars.

2 **Sec. 2-(52). Same—Wyoming County.**—For the county
2 of Wyoming, six thousand dollars.

2 **Sec. 3. Salaries of Circuit Clerks.**—The annual com-
2 pensation of the clerk of the circuit court (or clerk of the
3 circuit and criminal or intermediate or other court of
4 limited jurisdiction) in each county shall, on and after
5 January one, one thousand nine hundred sixty-three, be
6 in the amounts set forth in sections three-(one) to three-
7 (fifty-two), inclusive, of this article.

2 **Sec. 3-(1). Same—Barbour County.**—For the county of
2 Barbour, three thousand two hundred dollars.

Sec. 3-(2). Same—Berkeley County.—For the county
2 of Berkeley, five thousand dollars.

Sec. 3-(3). Same—Boone County.—For the county of
2 Boone, five thousand five hundred dollars.

Sec. 3-(4). Same—Braxton County.—For the county of
2 Braxton, four thousand eight hundred dollars.

Sec. 3-(5). Same—Brooke County.—For the county of
2 Brooke, four thousand eight hundred dollars.

Sec. 3-(6). Same—Cabell County.—For the county of
2 Cabell, eight thousand four hundred dollars.

Sec. 3-(7). Same—Calhoun County.—For the county of
2 Calhoun, two thousand eight hundred dollars.

Sec. 3-(8). Same—Clay County.—For the county of
2 Clay, two thousand seven hundred dollars.

Sec. 3-(9). Same—Doddridge County.—For the county
2 of Doddridge, three thousand six hundred dollars.

Sec. 3-(10). Same—Fayette County.—For the county
2 of Fayette, five thousand five hundred dollars.

Sec. 3-(11). Same—Gilmer County.—For the county
2 of Gilmer, three thousand six hundred dollars.

Sec. 3-(12). Same—Greenbrier County.—For the county
2 of Greenbrier, four thousand three hundred dollars.

Sec. 3-(13). Same—Hampshire County.—For the coun-
2 ty of Hampshire, not less than two thousand six hundred
3 dollars nor more than three thousand dollars.

Sec. 3-(14). Same—Hancock County.—For the county
2 of Hancock, four thousand five hundred dollars.

Sec. 3-(15). Same—Harrison County.—For the county
2 of Harrison, seven thousand dollars.

Sec. 3-(16). Same—Jackson County.—For the county
2 of Jackson, three thousand seven hundred fifty dollars.

Sec. 3-(17). Same—Jefferson County.—For the county
2 of Jefferson, four thousand two hundred fifty dollars.

Sec. 3-(18). Same—Kanawha County.—For the county
2 of Kanawha, twelve thousand dollars.

Sec. 3-(19). Same—Lewis County.—For the county of
2 Lewis, four thousand dollars.

Sec. 3-(20). Same—Lincoln County.—For the county of
2 Lincoln, four thousand eight hundred dollars.

Sec. 3-(21). Same—Logan County.—For the county of
2 Logan, seven thousand two hundred dollars.

Sec. 3-(22). Same—Marion County.—For the county of
2 Marion, seven thousand two hundred dollars.

Sec. 3-(23). Same—Marshall County.—For the county
2 of Marshall, five thousand dollars.

Sec. 3-(24). Same—Mason County.—For the county of
2 Mason, four thousand two hundred dollars.

Sec. 3-(25). Same—McDowell County.—For the county
2 of McDowell, six thousand eight hundred dollars.

Sec. 3-(26). Same—Mercer County.—For the county of
2 Mercer, seven thousand dollars.

Sec. 3-(27). Same—Mineral County.—For the county of
2 Mineral, five thousand dollars.

Sec. 3-(28). Same—Mingo County.—For the county of
2 Mingo, five thousand eight hundred dollars.

Sec. 3-(29). Same—Monongalia County.—For the coun-
2 ty of Monongalia, six thousand dollars.

Sec. 3-(30). Same—Monroe County.—For the county of
2 Monroe, two thousand four hundred dollars.

Sec. 3-(31). Same—Morgan County.—For the county
2 of Morgan, two thousand six hundred dollars.

Sec. 3-(32). Same—Nicholas County.—For the county
2 of Nicholas, four thousand three hundred dollars.

Sec. 3-(33). Same—Ohio County.—For the county of
2 Ohio, eight thousand forty dollars.

Sec. 3-(34). Same—Pleasants County.—For the county
2 of Pleasants, three thousand three hundred dollars.

2 **Sec. 3-(35). Same—Pocahontas County.**—For the county of Pocahontas, three thousand dollars.

2 **Sec. 3-(36). Same—Preston County.**—For the county of Preston, four thousand five hundred dollars.

2 **Sec. 3-(37). Same—Putnam County.**—For the county of Putnam, four thousand two hundred dollars.

2 **Sec. 3-(38). Same—Raleigh County.**—For the county of Raleigh, seven thousand dollars.

2 **Sec. 3-(39). Same—Randolph County.**—For the county of Randolph, six thousand dollars.

2 **Sec. 3-(40). Same—Ritchie County.**—For the county of Ritchie, three thousand four hundred dollars.

2 **Sec. 3-(41). Same—Roane County.**—For the county of Roane, four thousand two hundred dollars.

2 **Sec. 3-(42). Same—Summers County.**—For the county of Summers, three thousand six hundred dollars.

2 **Sec. 3-(43). Same—Taylor County.**—For the county of Taylor, three thousand two hundred dollars.

2 **Sec. 3-(44). Same—Tucker County.**—For the county of Tucker, three thousand two hundred dollars.

2 **Sec. 3-(45). Same—Tyler County.**—For the county of Tyler, three thousand six hundred dollars.

2 **Sec. 3-(46). Same—Upshur County.**—For the county of Upshur, three thousand six hundred dollars.

2 **Sec. 3-(47). Same—Wayne County.**—For the county of Wayne, five thousand seven hundred dollars.

2 **Sec. 3-(48). Same—Webster County.**—For the county of Webster, three thousand eight hundred dollars.

2 **Sec. 3-(49). Same—Wetzel County.**—For the county of Wetzel, five thousand dollars.

2 **Sec. 3-(50). Same—Wirt County.**—For the county of Wirt, one thousand eight hundred dollars.

2 **Sec. 3-(51). Same—Wood County.**—For the county of Wood, six thousand dollars.

Sec. 3-(52). Same—Wyoming County.—For the county of Wyoming, six thousand dollars.

Sec. 4. Salaries of Joint Clerks of County and Circuit Courts.—The annual compensation of the clerks of the courts in the counties where both the office of the clerk of the county court and the clerk of the circuit court are held by the same person shall be as follows: Hardy county, four thousand five hundred dollars; Grant county, four thousand two hundred dollars; Pendleton county, four thousand nine hundred dollars.

The salaries now set forth in the code insofar as they affect the salaries enumerated in this bill shall remain in full force and effect until the effective dates herein set out.

CHAPTER 10

(House Bill No. 69—By Mr. Haythe and Mr. Goldenberg)

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the manner in which county or district property can be sold by county courts, and specifically extending the exception to the requirement of public auctions to the sale or disposition of such property for public use to the United States of America, its instrumentalities, agencies or political subdivisions for an adequate consideration.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

Section

3. Sale of county or district property.

Section 3. Sale of County or District Property.—In all instances where the county court of a county is by law

3 authorized to sell or dispose of any property, either real
4 or personal, belonging to the county or held by it for the
5 use of any district thereof, the same shall be sold at
6 public auction, at the front door of the courthouse of the
7 county, and such sale shall be conducted by the president
8 of the county court, but before making any such sale,
9 notice of the time, terms and place of sale shall be given
10 by publication thereof once each week for two consecu-
11 tive weeks in some newspaper of general circulation in
12 said county, which notice shall contain a brief description
13 of the property to be sold: *Provided, however,* That this
14 section shall not apply to the sale of any one item of
15 property of less value than one thousand dollars: *Pro-*
16 *vided further,* That the provisions of this section con-
17 cerning sale at public auction shall not apply to a county
18 court selling or disposing of its property for a public use
19 to the United States of America, its instrumentalities,
20 agencies or political subdivisions or to the state of West
21 Virginia, or its political subdivisions, including county
22 boards of education, for an adequate consideration with-
23 out considering alone the present commercial or market
24 value of the property.



CHAPTER 11

(Senate Bill No. 11—By Mr. Carson, Mr. President, and Mr. McKown)

[Passed February 6, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-g, relating to the making, validity and effect of contracts entered into by the state board of education with licensed or certain unlicensed insurers and requiring such unlicensed insurers to become licensed but exempt from premium tax provisions of the licensing laws, and further relating to the validity and effect of contracts or policies of insurance issued thereunder to individuals for

supplemental retirement benefits or for other insurance benefits for persons employed by the state board of education at institutions of higher education.

Be it enacted by the Legislature of West Virginia:

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

Article 2. State Board of Education.

Section

13-g. Requirements for contracting with insurers; effect thereof; exemption of certain insurers from premium and annuity taxes.

Section 13-g. Requirements for Contracting with Insurers; Effect Thereof; Exemption of Certain Insurers from Premium and Annuity Taxes.—In contracting for the group insurance provided for in section thirteen-c and for the supplemental retirement benefits provided for in section thirteen-f of this article, as well as for other insurance benefits for any and all persons employed by it at institutions of higher learning under its control, the state board of education shall solicit proposals for the coverage sought, which proposals shall be obtained by public notice inserted at least twice in a newspaper of statewide circulation at least two weeks before the final date for submitting proposals. The board may also solicit proposals by sending requests by mail to prospective insurers. Upon receipt and consideration of such proposals as may be submitted the board shall have the authority to accept the proposal of and contract with the insurer offering the insurance program or programs determined by the board, in its judgment, to be the most desirable to the beneficiaries thereof, whether such insurer be then licensed as an insurance company in this state or not: *Provided, That* no contract shall be made effective unless and until the insurance company becomes licensed as a life insurance company in accordance with article three, chapter thirty-three of this code, as amended: *Provided further, That* if such insurer shall be a life insurance company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding and strengthening nonprofit institutions or foundations en-

30 gaged primarily in education or research, by issuing in-
31 surance and annuity contracts only to or for the benefit
32 of such institutions and to individuals engaged in the
33 service of such institutions, it shall be exempt from the
34 payment of premium and annuity taxes provided for by
35 sections fourteen, fourteen-a and fifteen, article three, and
36 any other pertinent premium tax sections, of chapter
37 thirty-three of this code, as amended, as to all annuity or
38 insurance contracts made with educational institutions
39 located within, or relative to subjects of insurance resi-
40 dent in, West Virginia.

CHAPTER 12

(Senate Bill No. 2—By Mr. Carson, Mr. President, and Mr. McKown)

[Passed February 5, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualification of applicants for area vocational educational programs.

Be it enacted by the Legislature of West Virginia:

That section six, article 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 2-b. Area Vocational Educational Program.

Section

6. Qualifications of applicants to participate as students; rules and regulations governing eligibility of applicants; fee students.

Section 6. Qualifications of Applicants to Participate as Students; Rules and Regulations Governing Eligibility of Applicants; Fee Students.—Applicants desirous of participating as students in the area vocational educational programs shall be at least sixteen years of age, residents of the state of West Virginia and shall be certified by the

7 West Virginia department of employment security that
8 they are not gainfully employed: *Provided*, That appli-
9 cants for training courses, the completion of which shall
10 fit the applicant for employment in hazardous occupa-
11 tions, which are so found and so declared by the United
12 States department of labor, shall be at least seventeen
13 years of age. The director of vocational education shall
14 establish rules and regulations to determine the eligibil-
15 ity of applicants to participate in the program, in addition
16 to the above requirements, based upon the fitness of the
17 applicant to benefit from the instructions given: *Pro-*
18 *vided, however*, That persons other than those certified as
19 unemployed may enroll in classes in said instructional
20 centers upon the payment of a fee to be established by
21 the director of vocational education.

CHAPTER 13

(House Bill No. 72—By Mr. Speaker, Mr. Singleton, and Mr. Floyd)

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c, relating to job preparation for school dropouts.

Be it enacted by the Legislature of West Virginia:

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

Article 2-c. Job-Preparation Program for School Dropouts.

Section

1. Establishment of job-preparation program.
2. Administration and supervision.
3. Development of job-preparation program.
4. Pilot experiment.

Section 1. Establishment of Job-Preparation Program.

2 —Authority is hereby given for the establishment of a
3 job-preparation program for school dropouts, such pro-
4 gram to be financed by the state, in cooperation with the
5 counties, and to be based on the following described
6 needs and purposes:

7 (1) To lessen school dropouts, West Virginia presently
8 having an estimated thirty thousand boys and girls six-
9 teen and seventeen years of age who have quit school
10 before high school graduation.

11 (2) To provide a planned program of practical job
12 preparation on the basis of interest, aptitude and ability
13 for those who drop out before completing high school.

14 (3) To make participation in such a program compul-
15 sory for all male youth sixteen and seventeen years of
16 age with the view of later extending it to include the
17 female dropouts falling in the same age bracket.

Sec. 2. Administration and Supervision.—Subject to
2 such rules and regulations as the state board of education
3 may deem advisable, the administration and supervision
4 of said youth job-preparation program shall be under the
5 state department of education and in cooperation with
6 school officials and boards of education of the respective
7 counties. There shall be selected, by the state superin-
8 tendent, a supervisor of the program who shall be under
9 the direction of the division of vocational education. It
10 shall be understood that the said supervisor shall be
11 authorized to draw upon the aid and services of such other
12 divisions of the department of education as guidance,
13 counseling and testing; driver education and school trans-
14 portation; instruction and curriculum; as well as other
15 professional agencies and organizations in or outside of
16 government that may be able to lend help on a voluntary
17 basis.

Sec. 3. Development of Job-Preparation Program.—

2 The state department of education, by and with the help
3 of the respective counties, shall develop a practical job-
4 preparation program for all male youth as hereinafter
5 designated. The program shall provide job training, based

6 upon interest, aptitude and ability of said youth in such
7 areas as the following but not bound by nor limited to
8 the same: Radio and television repair; household equip-
9 ment repair; gardening (lawn upkeep, shrubbery pruning,
10 etc.); lawn equipment repair; window upkeep and clean-
11 ing (business-industrial, residential); general house
12 cleaning (including wall washing, floor renovation, etc.);
13 industrial and household painting; restaurant work
14 (waiter, bus boy, short-order cook, etc.); custodial serv-
15 ices; service station attendant; auto repair; carpentry
16 (helper); plastering (helper such as mixing); masonry
17 work (helper); plumbing (helper); helper for air-con-
18 ditioning installation; electrical wiring; office equipment
19 upkeep and repair; metal work (helper); sign painting;
20 nursing home attendant; hospital orderly, etc.; show card
21 work; construction work (use of various types of equip-
22 ment); shoe repair; leather crafts; wood crafts; ceramic
23 crafts; stock person in merchandising; furniture refinish-
24 ing and upholstery; photography (including camera up-
25 keep, repair, etc.); installation, repair and upkeep of pub-
26 lic address systems; window display (assistant); check-
27 out in self-service stores; motor boat upkeep and repair;
28 fishing-hunting equipment upkeep and repair; multilith
29 operation, including equipment upkeep and repair; park-
30 ing meter repair and care; utility meter reading, repair,
31 etc.; hotel services; roof installation, repair and upkeep;
32 auto body repair and painting; delivery services (milk,
33 bread, etc.); various dry-cleaning and laundry services.

34 Job-preparation instruction shall be financed from state
35 funds, which may be supplemented by county and any
36 available federal funds for further enrichment of the pro-
37 gram. The instructional program shall be under the
38 supervision of the county, or area administration where
39 such prevails, subject to the guidance and direction of the
40 state supervisor. County or area directors of the program
41 and teachers of any academic aspects of the program shall
42 be duly certified teachers. For instruction in the common
43 jobs and occupations, persons of practical experience in
44 such may be employed and they shall be classified as job
45 trainers. Nothing shall prevent the use of approved volun-
46 teers in this program.

47 In initiating this job-preparation program, any existing
48 public school buildings and facilities or such as may be
49 provided in the future on an area or county basis, which
50 may be adapted to or useful in such a job-preparation
51 program, shall be made available during the summer
52 months for the said program.

Sec. 4. Pilot Experiment.—In order to determine the
2 practicability, effectiveness and cost of the job-prepara-
3 tion program for school dropouts, there shall be estab-
4 lished an experimental pilot program in a selected county
5 for the summer months of one thousand nine hundred
6 sixty-two. Also, there shall be an advisory committee
7 comprised of eight members, four of whom shall be
8 selected jointly by the legislative interim committee from
9 their membership and four persons to be selected at large
10 by the governor. This committee shall work in close co-
11 operation with the state department of education and the
12 county officials of the selected pilot county in developing
13 and carrying out the experimental job-preparation pro-
14 gram in said pilot county. From time to time, the com-
15 mittee shall make progress reports to the governor and
16 the joint legislative interim committees with its final re-
17 port and recommendations to be submitted not later than
18 December one, one thousand nine hundred sixty-two.
19 Subsequently, the governor and the joint legislative in-
20 terim committees shall make their report to the fifty-sixth
21 Legislature as to what steps should be taken in the further
22 implementation of said job-preparation program or its
23 abolition.

24 By not later than thirty days following the effective
25 date of this article, the state superintendent shall have
26 named the supervisor of the program and, by and with
27 the advice of the advisory committee, shall have selected
28 the pilot county. In the selection of the pilot county,
29 these requisites shall be given consideration: (1) That
30 the county have a reasonably high ratio of school drop-
31 outs, (2) that it be within a depressed area of the state,
32 and (3) that the county school officials reflect a genuine
33 interest in developing the experimental program. Any
34 money appropriated for the preliminary study and the

35 pilot county experimental program shall be allocated to
36 the state department of education for said purpose to be
37 expended under the direction of the state superintendent
38 of schools, by and with the advice of the advisory com-
39 mittee. Expenses for the advisory committee shall be
40 paid from this fund: *Provided, however,* That the job-
41 preparation program and the pilot experiment, all as pro-
42 vided in this article, shall expire January one, one thou-
43 sand nine hundred sixty-three.

44 Transportation for the pupils included under said pro-
45 gram in said pilot county shall be furnished by the use
46 of said county's school transportation equipment, with
47 the cost of gasoline, oil, maintenance, and drivers being
48 borne out of money appropriated by the state for such
49 pilot county experiment.

50 Irrespective of the general law relating to pupil trans-
51 portation, the supervising authority shall make needed
52 rules and regulations for transporting such dropouts.

53 Notwithstanding the age limit provision set forth in
54 article eight of this chapter, any male youth who has
55 dropped out of school before fully completing his high
56 school education and is within the age bracket of sixteen
57 and seventeen years, inclusive, shall be subject to com-
58 pulsory participation in said job-preparation program in
59 said pilot county unless regularly employed.

CHAPTER 14

(Com. Sub. for Senate Bill No. 24—Originating in the
Senate Committee on Finance)

[Passed February 8, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section three, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers' retirement system and definitions of terms used thereunder.

Be it enacted by the Legislature of West Virginia:

That section three, article seven-a, 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 7-a. State Teachers' Retirement System.

Section

3. Definitions.

Section 3. Definitions.—"Teacher" shall include the following persons, if regularly employed for at least half-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) county superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative, or library staffs of the public schools; (h) the state superintendent of schools, heads, and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the board of governors of West Virginia University, any county board of education, the state department of education or the teachers' retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the state commissioner of public institutions; (l) employees of the state board of school finance if such person was formerly employed as a teacher in the public schools.

"Members of the administrative staff of the public schools" shall include deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff" of the public schools shall include every agricultural agent, boys' and girls' club agent, and every member of the agricultural ex-

34 tension staff whose work is not primarily stenographic,
35 clerical, or secretarial.

36 "Retirement system" shall mean the state teachers' re-
37 tirement system provided for in this article.

38 "Present teacher" shall mean any person who was a
39 teacher within the twenty years beginning July first, one
40 thousand nine hundred thirty-nine, and whose member-
41 ship in the retirement system has been continuous.

42 "New entrant" shall mean a teacher who is not a present
43 teacher.

44 "Present member" shall mean a present teacher who is
45 a member of the retirement system.

46 "Total service" shall mean all service as a teacher while
47 a member of the retirement system since last becoming a
48 member and, in addition thereto, his credit for prior serv-
49 ice, if any.

50 "Prior service" shall mean all service as a teacher com-
51 pleted prior to July first, one thousand nine hundred forty-
52 one, and all service of a present member who was em-
53 ployed as a teacher, and did not contribute to retirement
54 account because he was legally ineligible for membership
55 during such service.

56 "Average final salary" shall mean the average annual
57 salary earned as a teacher during the last fifteen years of
58 prior service, including military service, as provided here-
59 in, or if prior service is less than fifteen years, the average
60 annual salary for that period. If the records for deter-
61 mining each annual salary needed cannot reasonably be
62 established by the retirement board, then the term shall
63 mean the average annual salary of the teacher for years
64 for which records are available.

65 "Accumulated contributions" shall mean all deposits
66 and all deductions from the earnable compensation of a
67 contributor minus the total of all supplemental fees de-
68 ducted from his compensation.

69 "Regular interest" shall mean interest at three per cent
70 compounded annually, or a higher earnable rate if ap-
71 proved by the retirement board.

72 "Refund interest" shall mean the interest on refunds
73 of the accumulated contributions and deposits payable to

74 former members or to the beneficiaries of deceased mem-
75 bers, as provided in this article. The rate for refund in-
76 terest shall be the average annual rate of interest, cal-
77 culated to one decimal place, earned on retirement board
78 investments in effect at the end of the fiscal year for which
79 the interest is due, according to the sworn statement of
80 the fund custodian required by section nineteen of this
81 article.

82 "Employer" shall mean the agency of and within the
83 state which has employed or employs a member.

84 "Contributor" shall mean a member of the retirement
85 system who has an account in the teachers' accumulation
86 fund.

87 "Beneficiary" shall mean the recipient of annuity pay-
88 ments made under the retirement system.

89 "Refund beneficiary" shall mean the estate of a de-
90 ceased contributor, or such person as he shall have nomi-
91 nated as beneficiary of his contributions by written desig-
92 nation duly executed and filed with the retirement board.

93 "Earnable compensation" shall mean the full compen-
94 sation actually received by members for service as teach-
95 ers whether or not a part of such compensation is received
96 from other funds, federal or otherwise, than those pro-
97 vided by the state or its subdivisions. Allowances from
98 employers for maintenance of members shall be deemed
99 a part of earnable compensation of such members.

100 "Annuities" shall mean the annual retirement payments
101 for life granted beneficiaries in accordance with this ar-
102 ticle.

103 "Member" shall mean a member of the retirement sys-
104 tem.

105 "Public schools" shall mean all publicly-supported
106 schools, including normal schools, colleges, and universi-
107 ties in this state.

108 "Deposit" shall mean a voluntary payment to his ac-
109 count by a member.

110 The masculine gender shall be construed so as to in-
111 clude the feminine.

112 Age in excess of seventy years shall be deemed to be
113 seventy years.

CHAPTER 15

(Senate Bill No. 5—By Mr. Carson, Mr. President, and Mr. McKown)

[Passed February 7, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to state aid for increased enrollment.

Be it enacted by the Legislature of West Virginia:

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

Article 9-a. Allocation of State Aid for Schools.

Section

15. State aid for increased enrollment.

Section 15. State Aid for Increased Enrollment.—To
2 provide for the support of increased net enrollments in
3 the counties in a school year over the net enrollments
4 used in the computation of total state aid for that year,
5 there shall be appropriated for that purpose from the gen-
6 eral revenue fund an amount equal to the average total
7 state aid per net pupil multiplied by the total of all of the
8 increases in the net enrollments of the counties made by
9 comparing the most recent reports of net enrollment for
10 the third school month to the immediately previous year's
11 reports for the same school month.
12 Upon determination of the several increases in the
13 respective counties' net enrollments, as of the close of the
14 third school month, each county showing such increase
15 shall be allocated an amount equal to that county's aver-
16 age per net pupil total state aid multiplied by the increase
17 in that county's net enrollment found as provided here-
18 tofore. Such allocations shall be distributed by not later
19 than December thirty-one of each year to the counties
20 having increases in net enrollment as heretofore provided.

21 If the amount appropriated for this purpose shall not be
22 sufficient to provide payment in full for the total of these
23 several allocations, each county allocation shall be re-
24 duced to an amount which is proportionate to the appro-
25 priation compared to the total of the several allocations,
26 and the allocations as thus adjusted shall be distributed
27 to the counties as provided in this section.

28 No provision of this section shall be construed to in-
29 anyway affect the allocation of moneys for educational
30 purposes to a county under other provisions of law.

CHAPTER 16

(Senate Bill No. 33—By Mr. Carson, Mr. President
and Mr. McKown)

[Passed February 6, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-d, relating to the making, validity and effect of contracts entered into by the board of governors of West Virginia University with licensed or certain unlicensed insurers and requiring such unlicensed insurers to become licensed but exempt from premium tax provisions of the licensing laws, and further relating to the validity and effect of contracts or policies of insurance issued thereunder to individuals for supplemental retirement benefits, or for other insurance benefits, for persons employed by the board of governors of West Virginia University at institutions of higher education.

Be it enacted by the Legislature of West Virginia:

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

Article 11. West Virginia University.**Section**

5-d. Requirements for contracting with insurers; effect thereof; exemption of certain insurers from premium and annuity taxes.

Section 5-d. Requirements for Contracting with Insurers; Effect Thereof; Exemption of Certain Insurers from Premium and Annuity Taxes.—In contracting for the group insurance provided for in section five-b and for the supplemental retirement benefits provided for in section five-c of this article, as well as for other insurance benefits for any and all persons employed by it, the board of governors of West Virginia University shall solicit proposals for the coverage sought, which proposals shall be obtained by public notice inserted at least twice in a newspaper of statewide circulation at least two weeks before the final date of submitting proposals.

The board may also solicit proposals by sending requests by mail to prospective insurers. Upon receipt and consideration of such proposals as may be submitted the board shall have the authority to accept the proposal of and contract with the insurer offering the insurance program or programs determined by the board, in its judgment, to be the most desirable to the beneficiaries thereof, whether such insurer be then licensed as an insurance company in this state or not: *Provided*, That no contract shall be made effective unless and until the insurance company becomes licensed as a life insurance company in accordance with article three, chapter thirty-three of this code, as amended: *Provided further*, That if such insurer shall be a life insurance company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding and strengthening nonprofit institutions or foundations engaged primarily in education or research, by issuing insurance and annuity contracts only to or for the benefit of such institutions and to individuals engaged in the service of such institutions, it shall be exempt from the payment of premium and annuity taxes provided for by sections fourteen, fourteen-a and fifteen, article three, and any other pertinent premium tax sections, of chapter thirty-three of this code, as amended, as to all annuity or insurance contracts made with educational institutions

39 located within, or relative to subjects of insurance resi-
40 dent in, West Virginia.

CHAPTER 17

(Senate Bill No. 4—By Mr. Carson, Mr. President,
and Mr. Moreland)

[Passed January 22, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to the continuation and operation of a coal research bureau at West Virginia University.

Be it enacted by the Legislature of West Virginia:

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

Article 11. West Virginia University.

Section

9-a. Coal research bureau.

Section 9-a. Coal Research Bureau; Advisory Committee on Coal Research.—The coal research bureau, heretofore established in the school of mines at West Virginia University, shall be continued. Subject to such rules and regulations as may be prescribed by the board of governors, the director and staff of the bureau, under the supervision and direction of the dean of the school of mines, shall initiate and carry on a program of research designed to discover and develop new uses and new markets for West Virginia coal.

The costs of financing the research program shall be paid from any funds appropriated by the Legislature for the purpose, from any grants or gifts received by the bureau, and from any income received for research car-

ried on by the bureau under contract with any federal or state agency, or with any private corporation, association or individual. Within the limits of available funds, research activities may be conducted by the bureau itself, or under contract with some other research group, corporation or individual whenever this is deemed advisable.

In order to avoid wasteful duplication, the research program shall be carried on in close cooperation with the federal bureau of mines, the state department of mines, the planing and research division of the state department of commerce, and with other appropriate agencies, research organizations and establishments. The bureau shall from time to time publish and distribute to interested persons and agencies reports of its activities, findings and recommendations.

An "Advisory Committee on Coal Research", consisting of not less than four members, shall be appointed by the governor to serve at his will and pleasure. It shall be the duty of the committee to advise and counsel with the university concerning the program of the coal research bureau, and to make such recommendations to the governor and the Legislature concerning the support of the program as the committee may deem advisable.

CHAPTER 18

(House Bill No. 73—By Mr. Myles)

[Passed February 3, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the last day on which a person may file an announcement of his candidacy for nomination to any office, and specifically providing that the fourteenth Saturday preceding the day fixed for the primary election shall be the last day on which a person may file an announcement of his candidacy for

election to a county board of education, except for the year one thousand nine hundred sixty-two.

Be it enacted by the Legislature of West Virginia:

That section two, article six-a, 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-a. Absentee Voting by Members of Armed Services.

Section

2. Announcement of candidacy.

Section 2. Announcement of Candidacy.—While this article is in effect, the fourteenth Saturday rather than the fifth Saturday preceding the day fixed for the primary election shall be the last day on which a person may file announcement of his candidacy for nomination to any office or for election to a county board of education: *Provided, however,* That with respect to the announcement of candidacy for election to the county board of education in the year one thousand nine hundred sixty-two, the last date for filing shall be the thirteenth Saturday preceding the day fixed for such election. In all other respects, an announcement of candidacy shall be governed by the provisions of sections five-a and six, article four, chapter three of the code.

CHAPTER 19

(Com. Sub. for Senate Bill Nos. 28, 31 and 32—Originating
in the Senate Committee on the Judiciary)

[Passed February 5, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact sections two, five and nine, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the public uses for which private property may be taken or damaged in the exercise of the right of eminent domain; to restrictions on the location of pipe lines

and storage tanks near dwelling houses; and to crossings, connections, or alteration of works by agreement or civil action, involving companies and other bodies having the right of eminent domain; and relating particularly in these respects to the transportation by common carriers of coal and its derivatives and all mixtures and combinations thereof with any substance by pipe lines where such common carriers are engaged in some intrastate pipeline activity in this state.

Be it enacted by the Legislature of West Virginia:

That sections two, five and nine, article one, chapter fifty-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. Right of Eminent Domain.

Section

2. Public uses for which private property may be taken or damaged.
5. Restrictions as to dwelling houses.
9. Crossings, connections or alteration of works; civil action.

Section 2. Public Uses for Which Private Property May

- 2 **Be Taken or Damaged.**—The public uses for which private
- 3 property may be taken or damaged are as follows:

- 4 (a) For the construction, maintenance and operation
- 5 of railroad and traction lines (including extension, lateral
- 6 and branch lines, spurs, switches and sidetracks), canals,
- 7 public landings, wharves, bridges, public roads, streets,
- 8 alleys, parks and other works of internal improvement, for
- 9 the public use;

- 10 (b) For the construction and maintenance of telegraph,
- 11 telephone, electric light, heat and power plants, systems,
- 12 lines, transmission lines, conduits, stations (including
- 13 branch, spur and service lines), when for public use;

- 14 (c) For constructing, maintaining and operating pipe
- 15 lines, plants, systems and storage facilities for manufac-
- 16 turing gas and for transporting petroleum oil, natural gas,
- 17 manufactured gas, and all mixtures and combinations
- 18 thereof, by means of pipes, pressure stations or otherwise,
- 19 (including the construction and operation of telephone
- 20 and telegraph lines for the service of such systems and
- 21 plants), and for underground storage areas and facilities,

22 and the operation and maintenance thereof, by gas public
23 utilities selling natural gas at retail in West Virginia for
24 the injection, storage and removal of natural gas in sub-
25 terranean oil and/or gas bearing stratum, which, as shown
26 by previous exploration of the stratum sought to be con-
27 demned and within the limits of the reservoir proposed to
28 be utilized for such purposes, has ceased to produce or
29 has been proved to be nonproductive of oil and/or gas in
30 substantial quantities, when for public use, the extent of
31 the area to be acquired for such purpose to be determined
32 by the court on the basis of reasonable need therefor.
33 Nothing in this subsection shall be construed to interfere
34 with the power of the state and its political subdivisions
35 to enact and enforce ordinances and regulations deemed
36 necessary to protect the lives and property of citizens from
37 the effects of explosions of oil or gas;

38 (d) For constructing, maintaining and operating, water
39 plants and systems, including lines for transporting water
40 by any corporate body politic, or private corporation, for
41 supplying water to the inhabitants of any city, town, vil-
42 lage or community, for public use, including lands for
43 pump stations, reservoirs, cisterns, storage dams, and other
44 means of storing, purifying and transporting water, and
45 the right to take and damage lands which may be flooded
46 by the impounded waters, and to appropriate any spring,
47 stream and the surrounding property necessary to protect,
48 preserve and maintain the purity of any such spring,
49 stream, reservoir, cistern and water impounded by means
50 of any storage dam;

51 (e) For the purpose of constructing, maintaining and
52 operating sewer systems, lines and sewage disposal plants,
53 to collect, transport and dispose of sewage. When in the
54 interest of the public welfare and the preservation of the
55 public health, the construction of a sewer line to serve a
56 single building or institution shall be deemed a public
57 use, and, for such purpose, the right of eminent domain,
58 if within a municipal corporation, may be exercised in
59 the name of the municipal corporation, and if not within
60 a municipal corporation, in the name of the county court
61 of the county in which the property is located;

62 (f) For the reasonable use by an incorporated company

63 engaged in a public enterprise of which the state or any
64 county or municipality is the sole or a part owner;

65 (g) For courthouses and municipal buildings, parks,
66 public playgrounds, the location of public monuments, and
67 all other public buildings;

68 (h) For cemeteries, and the extension and enlargement
69 of existing cemeteries: *Provided*, That no lands shall be
70 taken for cemetery purposes which lie within four hun-
71 dred feet of a dwelling house, unless to extend the boun-
72 daries of an existing cemetery, and then only in such man-
73 ner that the limits of the existing cemetery shall not be
74 extended nearer than four hundred feet of any dwelling
75 house distant four hundred feet or more from such ceme-
76 tery, or nearer than it was to any dwelling house which
77 is within four hundred feet thereof;

78 (i) For public schools, public libraries, and public hos-
79 pitals;

80 (j) For the construction and operation of booms (in-
81 cluding approaches, landings and ways necessary for such
82 objects), when for a public use;

83 (k) By the state of West Virginia for any and every
84 other public use, object and purpose not herein specifically
85 mentioned. By the United States of America for each and
86 every legitimate public use, need and purpose of the gov-
87 ernment of the United States, within the purview, and
88 subject to the provisions of chapter one of this code;

89 (1) For constructing, maintaining and operating pipe
90 lines, plants, systems and storage facilities, for the trans-
91 portation by common carrier as a public utility of coal
92 and its derivatives and all mixtures and combinations
93 thereof with any substance by means of pipes, pressure
94 stations or otherwise (including the construction and
95 operation of telephone and telegraph lines for the service
96 of such systems and plants), for public use: *Provided*,
97 That the common carrier engages in some intrastate ac-
98 tivity in this state, if there is any reasonable demand
99 therefor: *Provided, however*, That, in addition to all other
100 requisites by federal or state constitutions, statute or
101 common law required for the taking of private property
102 for public use, a further prerequisite and condition
103 precedent to the exercise of such taking of or damage to

104 private property for public use as in this subsection here-
105 inabove provided, is that the public service commission
106 of this state, in an appropriate hearing and proceeding on
107 due notice to all interested persons, firms or corporations,
108 in accordance with the procedure now or hereafter estab-
109 lished by statute and the regulations thereunder, shall
110 have found that such pipeline transportation of coal and
111 its derivatives and all mixtures and combinations thereof
112 is required for the public convenience and necessity, and
113 that the public service commission of this state shall not
114 extend a certificate of convenience and necessity or make
115 such finding of public convenience and necessity unless,
116 in addition to the other facts required to support such
117 finding, it shall have been established by the applicant
118 therefor that the patents and other similar rights under
119 which the applicant proposes to construct, maintain or
120 operate such pipe line, plants, systems and storage facili-
121 ties shall be and shall remain equally available, insofar
122 as said subsequent applicant may determine such avail-
123 ability, upon fair and reasonable terms, to other bona fide
124 applicants seeking a certificate of convenience and neces-
125 sity and finding of fact for any other pipe line in West
126 Virginia; for the purpose of making the findings herein-
127 before set forth the public service commission shall have
128 and exercise jurisdiction, and that the aforesaid findings
129 in this proviso above set forth shall be subject to judicial
130 review as in other public service commission proceed-
131 ings.

132 It is the intention of the Legislature in amending this
133 section by the addition of subsection (1) as set forth above
134 to extend the right of eminent domain to coal pipe lines
135 for public use; to provide for regulation of such coal pipe
136 lines by the public service commission of this state or
137 the interstate commerce commission of the United States
138 of America, or both; to assure that such rights shall be
139 extended only to public utilities or common carriers as
140 distinguished from private carriers or contract carriers;
141 to make patents covering the same equally available to
142 others on fair and reasonable terms; and to prevent
143 monopolistic use of coal pipe lines by any users thereof
144 which would result in any appreciable economic detri-

145 ment to others similarly situated by reason of any such
146 monopoly.

Sec. 5. Restrictions as to Dwelling Houses.—No line for
2 the transportation of natural or artificial gas under pres-
3 sure or for the transportation of petroleum oil or for the
4 transportation of coal and its derivatives and mixtures and
5 combinations thereof with any substance, and no tank
6 for storing oil or natural gas, shall be laid or constructed
7 within one hundred feet of any occupied dwelling house,
8 without the consent of the owner. This section shall not
9 apply to the territory within municipal corporations.

**Sec. 9. Crossings, Connections or Alteration of Works;
2 Civil Action.**—If any railroad, canal company, company
3 organized for the purpose of transporting carbon oil or
4 natural or manufactured gas, or both, by means of pipes
5 or otherwise, company organized for the purpose of trans-
6 porting coal and its derivatives and all mixtures and com-
7 binations thereof with any substance by means of pipes
8 or otherwise, telephone or telegraph company, company
9 operating an electric transmission line, the state road com-
10 missioner, or any county court, deem it necessary in the con-
11 struction of its work, or any branch or siding thereof, to
12 cross any other railroad, canal, pipe line, any state or other
13 public road at grade or otherwise, telephone or telegraph
14 line or electric transmission line, it may do so, provided
15 its works be so constructed as not to impede the passage
16 or transportation of persons, property, or commodities
17 along, over or through the same. If any such company
18 desire that the course of any other railroad, canal, pipe
19 line, state, or other public road, telephone or telegraph
20 line, electric transmission line, or any stream which is not
21 a public highway, should be altered to avoid the necessity
22 of any crossing, or of frequent crossings, or to facilitate
23 the crossing thereof, or the construction of a parallel work,
24 the alteration may be made in such manner as may be
25 agreed between the company desiring such alteration and
26 the other railroad, or canal company, or pipeline com-
27 pany, or state road commissioner in the case of a state road,
28 the owner of the land to be affected by the alteration of
29 the course of such stream, telephone and telegraph com-

pany or the company operating such electric transmission line. In case the parties interested fail to agree upon such crossing or alteration as is desired, the company desiring it may bring a civil action, and in such action the court may, in a proper case, order that such, or any proper crossing, or alteration, may be made upon payment of damages to be ascertained as provided in article two of this chapter and the company desiring such crossing or alteration may thereupon proceed under said article two to obtain the right to make such crossing or alteration. If such crossing or alteration as is allowed by this section shall cause damage to any party or person, or to the owner of any lands, then the railroad, canal, pipeline company, telephone or telegraph company, or company operating such electric transmission line, or state road commissioner or county court, shall pay such damages; but any county-district road may be altered by any such company for the purpose aforesaid, whenever it shall have made an equally convenient road in lieu thereof.

CHAPTER 20

(Senate Bill No. 29—By Mr. Carson, Mr. President)

[Passed February 7, 1962: in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, to provide that for coal fired steam electric power plants, the output of which is for public use, the public use shall include the construction and maintenance of roads, rail facilities, and other ways and means by which to move fuel coal to such plants for use or consumption therein.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-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 twelve, to read as follows:

Article 1. Right of Eminent Domain.

Section

12. Facilities for moving fuel coal to coal fired steam electric power plants.

Section 12. Facilities for Moving Fuel Coal to Coal Fired Steam Electric Power Plants.—The owner or operator of a coal fired steam electric power plant, the output of which plant is for public use, shall have the right to construct, maintain and operate roads and rail facilities for transporting fuel coal to such power plant as a part of said plant and the same shall be considered to be for public use.

—C—

CHAPTER 21

(House Bill No. 23—By Mr. Speaker, Mr. Singleton,
and Mr. Mitchell)

[Passed February 8, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact sections five, seven and eight, article one; sections five, thirteen, fifty-five, fifty-eight, sixty-two and seventy-four, article two; and all of article six, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to coal mining.

Be it enacted by the Legislature of West Virginia:

That sections five, seven and eight, article one; sections five, thirteen, fifty-five, fifty-eight, sixty-two and seventy-four, article two; and all of article six, 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

1. Administration; Enforcement.
2. Coal Mines.
6. Certification of Coal Miners.

Article 1. Administration; Enforcement.**Section**

5. Eligibility; salary.
7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
8. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

Section 5. Eligibility; Salary.—The director of the department of mines shall be a male citizen of West Virginia, shall be a competent person of good repute and temperate habits and shall have had at least fifteen years' experience underground in coal mines, at least ten of which shall have been underground in mines in this state. He shall possess a practical knowledge of the different systems of working, ventilating and draining coal mines, and a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma in mining engineering from the West Virginia University school of mines, or any similarly accredited engineering school shall be counted as two years' working experience. The director shall devote all of his time to the duties of his office, and shall not be directly or indirectly interested financially in any mine in this state. The salary of the director of the department of mines shall be fourteen thousand dollars per year, and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines.

Sec. 7. Mine Inspectors; Districts and Divisions; Employment; Tenure; Oath; Bond.—Notwithstanding any other provisions of law, mine inspectors shall be selected, serve and be removed as in this article provided.

The director of the department of mines shall divide the state into not more than forty-five mining districts, and not more than five mining divisions, so as to equalize, as far as practical, the work of each inspector. He may assign inspectors to districts, designate and assign not more than one inspector at large to each division and one assistant inspector at large. He shall designate the places of abode of inspectors at points convenient to the mines of their respective districts, and, in the case of in-

14 spectors and assistant inspectors at large, their respective
15 divisions.

16 Mine inspectors serving as such on the first day of
17 July, one thousand nine hundred fifty-eight, may continue
18 to serve for a probationary period not exceeding one year
19 and if eligible as prescribed by section eight of this article,
20 may qualify for appointment during such probationary
21 period in accordance with the provisions of said section
22 eight: *Provided, however,* That in the event the mine
23 inspectors' examining board is unable to provide an ade-
24 quate register of certified eligible candidates for appoint-
25 ment prior to the first day of July, one thousand nine
26 hundred fifty-nine, said mine inspectors serving on a
27 probationary basis as aforesaid may at the discretion of
28 the director continue to serve at the will and pleasure of
29 the director until such time as an eligible candidate has
30 been furnished, said additional period of service not to
31 extend beyond midnight on the thirty-first day of Decem-
32 ber, one thousand nine hundred fifty-nine.

33 Except as in the next preceding paragraph provided,
34 all mine inspectors appointed after the mine inspectors'
35 examining board has certified to the director of the depart-
36 ment of mines an adequate register of qualified eligible
37 candidates in accordance with section eight of this article,
38 so long as such register contains the names of at least
39 three qualified eligible candidates, shall be appointed
40 from the names on such register. Each original appoint-
41 ment shall be made by the director of the department of
42 mines for a probationary period of not more than one
43 year.

44 The director of the department of mines shall make
45 each appointment from among the three qualified eligible
46 candidates on the register having the highest grades or
47 from mine inspectors serving on the first day of July,
48 one thousand nine hundred fifty-eight, and since that
49 date on a probationary basis as hereinbefore provided
50 and who qualify according to section eight of this article:
51 *Provided, however,* That the director of the department
52 of mines may, for good cause, at least thirty days prior
53 to making an appointment, strike any name from the
54 register. Upon striking any name from the register the

55 director of the department of mines shall immediately
56 notify in writing each member of the mine inspectors'
57 examining board of his action, together with a detailed
58 statement of the reasons therefor. Thereafter the mine
59 inspectors' examining board, after hearing, if it finds that
60 the action of the director of the department of mines was
61 arbitrary or unreasonable, may order the name of any
62 candidate so stricken from the register to be reinstated
63 thereon. Such reinstatement shall be effective from the
64 date of removal from the register.

65 Any candidate passed over for appointment for three
66 years shall be automatically stricken from the register.

67 After having served for a probationary period of one
68 year to the satisfaction of the director of the department
69 of mines, a mine inspector shall have permanent tenure
70 until he becomes sixty-five years of age, subject only to
71 dismissal for cause in accordance with the provisions of
72 section eight of this article. No mine inspector while in
73 office shall be directly or indirectly interested as owner,
74 lessor, operator, stockholder, superintendent or engineer
75 of any coal mine. Before entering upon the discharge of
76 his duties as a mine inspector, he shall take the oath of
77 office prescribed by the constitution, and shall execute
78 a bond in the penalty of two thousand dollars, with se-
79 curity to be approved by the director of the department
80 of mines, conditioned upon the faithful discharge of his
81 duties, a certificate of which oath and bond shall be filed
82 in the office of the secretary of state.

83 The district inspectors, inspectors at large and assistant
84 inspectors at large, together with the director, shall make
85 all inspections authorized by articles one and two of this
86 chapter and shall perform such other duties as are im-
87 posed upon mine inspectors by articles one, two and six
88 of this chapter.

Sec. 8. Eligibility for Appointment as Mine Inspector;
2 **Qualifications; Salary and Expenses; Removal.**—(a) No
3 person shall be eligible for appointment as a mine inspec-
4 tor after the effective date of this article unless, at the
5 time of his probationary appointment he: (1) Is a citizen
6 of West Virginia, in good health, not less than thirty nor

7 more than fifty-five years of age, and of good character,
8 reputation and temperate habits; (2) has had at least
9 ten years' practical experience in coal mines, at least five
10 years of which, immediately preceding his original ap-
11 pointment, shall have been in mines in this state: *Pro-*
12 *vided, however,* That graduation from the school of mines
13 of West Virginia University or any other accredited col-
14 lege of mining engineering shall be considered the equiva-
15 lent of two years' practical experience; (3) has had prac-
16 tical experience with dangerous gases found in coal mines;
17 and (4) has a good theoretical and practical knowledge
18 of mines, mining methods, mine ventilation, sound safety
19 practices and applicable mining laws.

20 (b) In order to qualify for appointment as a mine
21 inspector an eligible applicant shall submit to a written
22 and oral examination by the mine inspectors' examining
23 board and furnish such evidence of good health, character
24 and other facts establishing eligibility as the board may
25 require. If the board finds after investigation and exami-
26 nation that an applicant: (1) Is eligible for appointment
27 and (2) has passed all written and oral examinations,
28 with a grade of at least ninety per cent, the board shall
29 add such applicant's name and grade to the register of
30 qualified eligible candidates and certify its action to the
31 director of the department of mines. No candidate's
32 name shall remain in the register for more than three
33 years without requalifying.

34 (c) Salaries of district inspectors shall not be less than
35 seventy-five hundred dollars nor more than eighty-four
36 hundred dollars per annum; assistant inspectors at large
37 not less than eight thousand dollars nor more than eighty-
38 seven hundred dollars per annum; inspectors at large not
39 less than eighty-four hundred dollars nor more than nine
40 thousand dollars per annum, and reasonable traveling ex-
41 penses. Within the limits provided by law, the salary
42 of each inspector shall be fixed by the director of the
43 department of mines, subject to the approval of the mine
44 inspectors' examining board. In fixing salaries of mine
45 inspectors, the director of the department of mines shall
46 consider ability, performance of duty and experience. No
47 reimbursement for traveling expenses shall be made ex-

48 cept upon an itemized account of such expenses submitted
49 by the inspector, who shall verify, upon oath, that such
50 expenses were actually incurred in the discharge of his
51 official duties.

52 (d) A mine inspector, after having received a perma-
53 nent appointment shall be removed from office only for
54 physical or mental impairment, incompetency, neglect of
55 duty, drunkenness, malfeasance in office, or other good
56 cause.

57 Proceedings for the removal of a mine inspector may
58 be initiated by the director of the department of mines
59 whenever he has reasonable cause to believe and does
60 believe that adequate cause exists, warranting removal.
61 Such a proceeding shall be initiated by a verified petition,
62 filed with the board by the director of the department of
63 mines, setting forth with particularity the facts alleged.
64 Not less than twenty reputable citizens, who are oper-
65 ators or employees in mines in the state, may petition
66 the director of the department of mines for the removal
67 of a mine inspector. If such petition is verified by at
68 least one of the petitioners, based on actual knowledge
69 of the affiant, and alleges facts which, if true, warrant
70 the removal of the inspector, the director of the depart-
71 ment of mines shall cause an investigation of the facts
72 to be made. If, after such investigation, the director finds
73 that there is substantial evidence which, if true, warrants
74 removal of the inspector, he shall file a petition with the
75 board requesting removal of the inspector.

76 On receipt of a petition by the director of the depart-
77 ment of mines seeking removal of a mine inspector the
78 board shall promptly notify the inspector to appear before
79 it at a time and place designated in said notice, which
80 time shall be not less than fifteen days thereafter. There
81 shall be attached to the copy of the notice served upon
82 the inspector a copy of the petition filed with the board.

83 At the time and place designated in said notice, the
84 board shall hear all evidence offered in support of the
85 petition and on behalf of the inspector. Each witness
86 shall be sworn and a transcript shall be made of all evi-
87 dence taken and proceedings had at any such hearing.

88 No continuance shall be granted except for good cause
89 shown.

90 The chairman of the board and the director of the de-
91 partment of mines shall have power to administer oaths
92 and subpoena witnesses.

93 Any mine inspector who shall wilfully refuse or fail
94 to appear before the board, or having appeared, shall
95 refuse to answer under oath any relevant question on the
96 ground that his testimony or answer might incriminate
97 him, or shall refuse to waive immunity from prosecution
98 on account of any relevant matter about which he may
99 be asked to testify at any such hearing before the board,
100 shall forfeit his position.

101 If, after hearing, the board finds that the inspector
102 should be removed, it shall enter an order to that effect.
103 The decision of the board shall be final and shall not be
104 subject to judicial review.

Article 2. Coal Mines.

Section

- 5. Ventilation of mines in general.
- 13. Same; instruction of employees; annual examination of persons using flame safety lamps; records of examination.
- 55. Protective clothing.
- 58. Fire protection.
- 62. 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.
- 74. Monthly report by operator of mine.

Section 5. Ventilation of Mines in General.—The operator or mine foreman of every coal mine, whether worked by shaft, slope or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In mines classified as gassy the quantity of air passing through the last open crosscut between the intake and return in any set of entries shall be not less than six thousand cubic feet of air per minute, and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases: *Provided, however,* That the quantity of air reaching the last crosscut in pillar sections may be less than six thousand cubic feet per minute if at least six thousand cubic feet of air per minute is being delivered to the intake of the pillar line.

15 In nongassy mines the quantity of air being circulated
16 shall not be less than one hundred fifty cubic feet per
17 man per minute. If animals are used in a mine, five hun-
18 dred cubic feet per animal per minute must be provided
19 in addition to the minimum volume specified for men.
20 The air current shall under any conditions have a suffi-
21 cient volume and velocity to reduce and carry away
22 smoke from blasting and any flammable or harmful
23 gases. All active underground working places in a mine
24 shall be ventilated by a current of air containing not less
25 than nineteen and five-tenths per centum of oxygen, and
26 not more than one per centum of carbon dioxide, and no
27 harmful quantities of other noxious or poisonous gases.

28 As working places advance, crosscuts for air shall be
29 made not to exceed eighty feet apart in pillars, or line
30 brattice or other approved methods of ventilation shall
31 be used so as to properly ventilate the face. With the
32 approval of the state department of mines, greater dis-
33 tances than those so specified may be made between
34 crosscuts. All crosscuts between the main intake and
35 return airways not required for passage of air and equip-
36 ment shall be closed with stoppings substantially built
37 with incombustible material, so as to keep working places
38 well ventilated.

39 In gassy mines a system of bleeder openings or air
40 courses designed to provide positive movement of air
41 through and/or around abandoned or caved areas, suffi-
42 cient to prevent dangerous accumulation of gas in such
43 areas and to minimize the effect of variations in atmos-
44 pheric pressure, shall be made a part of pillar recovery
45 plans projected after the effective date of this article.

46 If a bleeder return is closed as a result of roof falls or
47 water during pillar recovery operations, pillar operations
48 may continue without reopening the bleeder return so
49 long as a minimum of twelve thousand cubic feet of
50 air per minute is delivered to the intake of the pillar
51 line.

52 Not more than sixty persons shall be permitted to work
53 in the same air current: *Provided*, That a larger number,
54 not exceeding eighty persons, may be allowed by the

55 director of the department of mines where it is imprac-
56 ticable to comply with the foregoing requirements.

57 No operator or mine foreman shall permit any persons
58 to work where they are unable to maintain the quantity
59 and quality of the air current as heretofore required:
60 *Provided, however,* That such provision shall not pro-
61 hibit the employment of men to make places of employ-
62 ment safe.

63 The ventilation of any mine shall be so arranged by
64 means of airlocks, overcasts, or undercasts, that the use
65 of doors on passageways where men or equipment travel
66 may be kept to a minimum. Where doors are used in a
67 gassy mine they shall be erected in pairs so as to provide
68 a ventilated airlock, unless the doors are operated me-
69 chanically: *Provided, however,* That such provision shall
70 not apply to doors in or between panel or room entries.
71 In mines not classified as gassy, single doors may be used,
72 provided such doors are closed promptly after men or
73 equipment have passed through them.

74 Overcasts or undercasts shall be constructed of incom-
75 bustible material and maintained in good condition.

76 Where practicable, a crosscut shall be provided at or
77 near the face of each entry or room before such places
78 are abandoned.

79 Rooms, entries, airways, or other working places shall
80 not be driven in advance of air currents. Such provisions
81 shall not prohibit, as the room, entry or aircourse ad-
82 vances, the "necking" of any place for a distance which
83 shall not exceed that actually required for the installation
84 of mining equipment in use at this location: *Provided,*
85 *however,* That such room necks or entries are kept free
86 of accumulations of methane by use of line brattice or
87 other adequate means.

**Sec. 13. Same; Instruction of Employees; Annual Exam-
2 ination of Persons Using Flame Safety Lamps; Records of
3 Examination.**—It shall be the duty of the mine foreman, or
4 the assistant mine foreman, of every coal mine in this
5 state, to see that every person employed to work in such
6 mine shall, before beginning work therein, be instructed

7 in the particular danger incident to his work in such mine,
8 and furnished a copy of the mining laws and rules of such
9 mine. Every inexperienced person so employed shall work
10 under the direction of the mine foreman, his assistant, or
11 such other experienced worker as may be designated by
12 the mine foreman or assistant, until he is familiar with
13 the danger incident to his work.

14 Persons whose duties require them to use a flame safety
15 lamp shall be examined at least annually as to their
16 competence by a certified man and a record that such
17 examination was given, together with pertinent data
18 relating thereto, shall be kept on file by the operator and
19 a copy furnished to the department of mines.

Sec. 55. Protective Clothing.—Welders and helpers
2 shall use proper shields or goggles to protect their eyes.
3 All employees shall have approved goggles or shields and
4 use same where there is a hazard from flying particles,
5 or other eye hazards.

6 Employees engaged in haulage operations and all other
7 persons employed around moving equipment on the sur-
8 face and underground shall wear snug-fitting clothing.

9 Protective gloves shall be worn when material which
10 may injure hands is handled, but gloves with gauntleted
11 cuffs shall not be worn around moving equipment.

12 Safety hats and safety-toed shoes shall be worn by all
13 men while in or around a mine.

Sec. 58. Fire Protection.—Suitable fire protection shall
2 be provided at surface installations of fans, shops, tipples
3 and preparation plants, substations, hoist rooms and
4 compressor stations.

5 Underground storage places for lubricating oil and
6 grease in excess of two days' supply shall be of fireproof
7 construction.

8 Lubricating oil and grease kept in face regions or other
9 underground working places in a mine shall be in port-
10 able, closed, metal containers.

11 At underground shops and oil storage stations oily
12 rags, oily waste and waste paper shall be kept in closed
13 metal containers until removed for disposal.

14 Suitable underground fire protection shall be provided
15 at stationary substations and compressor stations, shops,
16 pumps, doors, transformer stations, battery charging sta-
17 tions, where oil and grease is stored, at conveyor loading
18 or discharge points and strategic points along rubber belt
19 lines, stables, and on active working sections.

20 Rock dust in quantities of five hundred pounds or more
21 shall be considered suitable for fire protection at the
22 above-mentioned underground locations, except that a fire
23 extinguisher suitable for the hazards present shall be pro-
24 vided as an additional protection at underground shops,
25 permanent substations, compressor stations, battery
26 charging stations and transformer stations.

27 Mine openings, where there is danger of fire entering
28 the mine, shall have adequate protection against surface
29 fires or dangerous volumes of smoke entering the mine.

Sec. 62. No Mine to Be Opened or Reopened without
2 **Prior Approval of Director of Department of Mines; Ap-**
3 **proval Fee; Extension of Certificate of Approval; Certifi-**
4 **cates Not Transferable; Section to Be Printed on Certifi-**
5 **cates.**—After the effective date of this section, no mine
6 shall be opened or reopened unless prior approval has
7 been obtained from the director of the department of
8 mines, which approval shall not be unreasonably with-
9 held. The operator shall pay for such approval a fee of
10 ten dollars, which payment shall be tendered with the
11 operator's application for such approval.

12 Within forty-five days after January first of each year
13 the operator of each mine holding a certificate evidencing
14 approval of the director to open a mine, shall apply for
15 the extension of such certificate of approval for an ad-
16 ditional year. Such approval, evidenced by a certificate
17 of the director, shall be granted as a matter of right and
18 without charge if at the time such application is made
19 the operator is in compliance with the provisions of sec-
20 tion seventy-four of this article. Applications for exten-
21 sion of such certificates of approval not submitted within
22 the time required shall be processed as an application
23 to open or reopen a mine and shall be accompanied by a
24 fee of ten dollars.

25 Certificates of approval issued pursuant to this section
26 shall not be transferable.

27 The provisions of this section shall be printed on the
28 reverse side of every certificate issued hereunder.

Sec. 74. Monthly Report by Operator of Mine.—The
2 operator of every coal mine shall, on or before the end
3 of each calendar month, file with the director a report
4 covering the preceding calendar month on forms fur-
5 nished by the director. Such reports shall state the num-
6 ber of accidents which have occurred, the number of per-
7 sons employed, the days worked and the actual tonnage
8 of coal mined.

Article 6. Certification of Coal Miners.

Section

1. Certificate of competency and qualification required of miners; apprentices.
2. Mine inspectors to examine and certify competency of miners.
3. Examinations by inspectors; records.
4. Fee for examination.
5. Examination to be practical; certificates not transferable; how certificates to be issued.
6. Refusal to issue certificate; appeal.
7. Limitation of scope of article.
8. Penalties.

Section 1. Certificate of Competency and Qualification
2 **Required of Miners; Apprentices.**—Except as hereinafter
3 provided no person shall be employed or work as a coal
4 miner in any mine in this state, without first having
5 obtained a certificate of competency and qualification.

6 Any miner holding a certificate may have one person
7 working with him, and under his direction, as an appren-
8 tice, and any foreman, assistant foreman or fire boss may
9 have not more than five persons working with him and
10 under his immediate supervision and direction, as ap-
11 prentices, for the purpose of learning and being in-
12 structed in the duties and calling of mining.

13 For the purposes of this article the term "coal miner"
14 or "miner" shall mean all underground workers in bi-
15 tuminous coal mines, except as hereinafter provided.

Sec. 2. Mine Inspectors to Examine and Certify Com-
2 **petency of Miners.**—On and after July one, one thousand

3 nine hundred sixty-two, all duties in connection with ex-
4 amining and certifying the competency and qualification
5 of coal miners shall be vested in and shall be performed
6 by mine inspectors (inspectors at large, assistant in-
7 spectors at large and district inspectors). Such duties
8 shall be exercised under the general supervision and
9 direction of the director of the department of mines, ex-
10 cept as otherwise provided in this article.

11 Certificates of competency and qualification issued prior
12 to July one, one thousand nine hundred sixty-two, by the
13 miners' examining board under prior law shall continue
14 to be valid for all purposes.

Sec. 3. Examinations by Inspectors; Records.—At such
2 times as mine inspectors make regular inspections of a
3 mine, they shall arrange to sit at some suitable place
4 convenient to the mine for the purpose of examining the
5 qualifications and competency of any person seeking a
6 certificate of qualification and competency. Notice of the
7 time and place of such examination shall be given to
8 management at the mine, to the local union thereat if
9 there is a local union, and notice shall also be posted at the
10 place or places in the vicinity of the mine where notices
11 to employees are ordinarily posted. Examinations shall
12 also be held at such times and places, and after such
13 notice, as the director finds necessary to enable all ap-
14 plicants for certificates to have opportunity to qualify for
15 certification.

16 Each inspector giving examinations shall keep an ac-
17 curate record showing a correct detailed account of the
18 examination of each applicant, including questions asked
19 and the answers given. Such records shall be forwarded
20 at least once each month to the director for filing in his
21 office as public records, open to public inspection.

Sec. 4. Fee for Examination.—Each applicant for ex-
2 amination shall pay to the examining inspector a fee of
3 one dollar. All such fees shall be promptly transmitted
4 to the director and by him paid into the state treasury.

Sec. 5. Examination to Be Practical; Certificates Not
2 **Transferable; How Certificates to Be Issued.**—All ex-

3 ainations shall be conducted in the English language
4 and shall be of a practical nature, so as to determine the
5 competency and qualifications of the applicant to engage
6 in the mining of bituminous coal with reasonable safety
7 to himself and his fellow employees. No applicant shall
8 be certified as qualified or competent who (1) has had
9 less than one year's practical experience as a miner or
10 as a miner apprentice, or (2) lacks a sound knowledge
11 of first aid. Evidence of satisfactory completion of a
12 course of instruction in first aid offered by the West Vir-
13 ginia Department of Mines, the Federal Bureau of Mines
14 or by such other sponsor as the director may approve,
15 may be received as proof of competence in first aid with-
16 out further examination.

17 Applicants shall be examined under oath and inspectors
18 shall have power to administer oaths to all applicants and
19 witnesses.

20 If the inspector examining the applicant finds the ap-
21 plicant qualified and competent to be a coal miner, he
22 shall issue to the applicant a certificate of qualification
23 and competency in such form as shall be prescribed by
24 the director, which shall entitle the holder thereof to be
25 employed and work as a coal miner in any mine in this
26 state.

27 Certificates shall not be transferable and an attempt
28 to transfer a certificate shall be deemed a violation of
29 this article.

Sec. 6. Refusal to Issue Certificate; Appeal.—If the in-
2 spector who examines an applicant for a certificate of
3 qualification and competency as a miner finds that the
4 applicant is not qualified and competent, he shall so
5 notify the applicant not more than ten days after the date
6 of examination.

7 Any applicant aggrieved by an action of a mine in-
8 spector in failing or refusing to issue a certificate of
9 qualification and competency may, within ten days of
10 notice of the action complained of, appeal to the director
11 who shall promptly give the applicant a hearing *de novo*
12 and either affirm the action of the inspector or take such
13 action as the inspector should have taken.

Sec. 7. Limitation of Scope of Article.—All persons
2 possessing certificates of qualification issued by the de-
3 partment of mines of this state, entitling them to act as
4 mine foreman, assistant mine foreman, or fire boss, shall
5 be eligible to engage at any time as miners in bitumi-
6 nous mines of this state. Supervisory and technically
7 trained employees of the operator, whose work con-
8 tributes only indirectly to mine operations, shall not
9 be required to possess a miners' certificate.

Sec. 8. Penalties.—Any person violating any of the pro-
2 visions of this article shall, upon conviction, be fined not
3 less than twenty-five nor more than one hundred dollars,
4 and in default in the payment of such fine and costs, shall
5 be imprisoned in the county jail for a period not exceed-
6 ing thirty days.

CHAPTER 22

(Senate Bill No. 17—By Mr. Carson, Mr. President, and
Mr. Smith)

[Passed February 3, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article seven-
teen, chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to traffic regulations by the state road commissioner.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

Section

11. Permits for excess size and weight.

Section 11. Permits for Excess Size and Weight.—(a)

2 The state road commissioner may, in his discretion, upon
3 application in writing and good cause being shown there-

4 for issue a special permit in writing authorizing, (1) the
5 applicant, in crossing any highway of this state, to op-
6 erate or move a vehicle or combination of vehicles of
7 a size or weight or load exceeding the maximum speci-
8 fied in this chapter or otherwise not in conformity with
9 the provisions of this chapter, whether such operation be
10 continuous or not, provided such applicant shall agree to
11 compensate the state road commissioner for all damages
12 or expenses incurred in connection with such crossing;
13 and (2) the applicant to operate or move a vehicle or
14 combination of vehicles of a size or weight of vehicles
15 or load exceeding the maximum specified in this chapter
16 or otherwise not in conformity with the provisions of
17 this chapter, except that a permit shall not be issued for
18 continuous operation of a vehicle not in conformity with
19 the provisions of this article relating to weight limita-
20 tions: *Provided, however,* That specially designed vehicles
21 which can only be used to transport and haul specific
22 liquid or semiliquid products and which were registered
23 in this state prior to the first day of July, one thousand
24 nine hundred fifty-one, shall be exempt from the pro-
25 visions of this chapter relating to weight limitations un-
26 til the first day of July, one thousand nine hundred sixty-
27 six, and on and after the latter said date said exemptions
28 shall not apply. In order for the exemption to apply during
29 the period of exemption, the owner or operator shall ap-
30 ply for, and the state road commissioner shall issue, a
31 permit for such vehicle allowing such owner or operator
32 to use the same upon the highways of this state during
33 said period.

34 (b) The application for any such permit shall speci-
35 fically describe the vehicle or vehicles and load to be op-
36 erated or moved along or across such highway and the
37 particular highway or crossing of the highway for which
38 permit to operate is requested, and whether such permit
39 is requested for a single trip or for a continuous opera-
40 tion.

41 (c) The state road commissioner is authorized to is-
42 sue or withhold such permit at his discretion; or, if such
43 permit is issued, to limit the number of trips, or to estab-
44 lish seasonal or other time limitations within which the

45 vehicles described may be operated on or across the high-
46 ways indicated, or otherwise to limit or prescribe condi-
47 tions of operation of such vehicle or vehicles, when nec-
48 essary to assure against undue damage to the road foun-
49 dations, surface, or structures, and may require such un-
50 dertaking, bond or other security as may be deemed neces-
51 sary to compensate for any injury to any roadway struc-
52 ture.

53 (d) Every such permit shall be carried in the vehicle
54 or combination of vehicles to which it refers and shall
55 be open to inspection by any police officer or authorized
56 agent of the state road commissioner granting such per-
57 mit, and no person shall violate any of the terms or con-
58 ditions of such special permit.

CHAPTER 23

(Com. Sub. for Senate Bill No. 10—Originating in the
Senate Committee on the Judiciary)

[Passed February 5, 1962; in effect ninety days from passage.

Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article five,
chapter eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating generally
to comprehensive plans by cities and counties for planning
and zoning.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article five, 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 5. Urban and Rural Planning and Zoning.

Section

16. Comprehensive plan; generally; regional planning and zoning in
counties.

**Section 16. Comprehensive Plan; Generally; Regional
2 Planning and Zoning in Counties.**—A planning commis-
3 sion shall make and recommend for adoption to the gov-

4 ernal body of the city or the county court, as the case
5 may be, a comprehensive plan for the physical develop-
6 ment of the territory within its jurisdiction. Any county
7 plan may include the planning of incorporated towns to
8 the extent to which, in the commission's judgment, they
9 are related to the planning of the unincorporated terri-
10 tory of the county as a whole: *Provided, however,* That
11 the plan shall not be considered as a comprehensive plan
12 for any incorporated town without the consent of the
13 planning commission and the governing body of such
14 incorporated town: *And provided further,* That the
15 county plan shall be coordinated with the plans of the
16 state road commission, insofar as it relates to highways
17 or thoroughfares under the jurisdiction of that commis-
18 sion. A county planning commission may prepare, and the
19 county court is authorized and empowered to adopt, a
20 comprehensive plan and zoning ordinance for either the
21 entire county, or for any part or parts thereof which con-
22 stitute an effective region or regions for planning and
23 zoning purposes without the necessity of adopting a plan
24 and ordinance for any other part. In determining what
25 constitutes an effective region or regions for planning and
26 zoning purposes, due consideration shall be given to such
27 factors as population density, health, general welfare,
28 water and sanitation requirements, and future potential
29 for residential, commercial, industrial or public use. The
30 procedure for the preparation and adoption of a compre-
31 hensive plan and zoning ordinance for a part of such
32 county shall be the same as the procedure for the prepara-
33 tion and adoption of a plan and ordinance for the entire
34 county, except that the election provided in section forty-
35 eight of this article shall be restricted to the electors re-
36 siding within the part or parts affected.

37 The comprehensive plan, with the accompanying maps,
38 plats, charts and descriptive and explanatory matter, shall
39 show recommendations for the development of the ter-
40 ritory covered by the plan and may include, among other
41 things, the general location, character and extent of streets
42 or roads, viaducts, bridges, waterways and waterfront
43 developments, parkways, playgrounds, forests, reserva-
44 tions, parks, airports and other public ways, grounds,

45 places and spaces; the general location and extent of pub-
46 licly-owned utilities and terminals, and other purposes;
47 the acceptance, widening, removal, extension, relocation,
48 narrowing, vacation, abandonment or change of use of
49 any of the foregoing public ways, grounds, places, spaces,
50 buildings, properties, utilities or terminals; the general
51 character, location and extent of community centers, town
52 sites or housing development; the general location and
53 extent of forests, agricultural areas and open-development
54 areas for the purposes of conservation, food and water sup-
55 ply, sanitary drainage facilities or the protection of urban
56 development; a land-classification and utilization pro-
57 gram; the distribution of population, and the uses of land
58 for trade, industry, habitation, recreation, agriculture, for-
59 estry, soil and water conservation and other purposes.

60 In the preparation of a comprehensive plan, a plan-
61 ning commission shall make careful and comprehensive
62 surveys and studies of the existing conditions and proba-
63 ble future changes of such conditions within the territory
64 under its jurisdiction. The comprehensive plan shall be
65 made with the general purpose of guiding and accom-
66 plishing a coordinated, adjusted and harmonious de-
67 velopment of the area which will, in accordance with
68 present and future needs and resources, best promote the
69 health, safety, morals, order, convenience, prosperity or
70 general welfare of the inhabitants, as well as efficiency
71 and economy in the process of development, including,
72 among other things, such distribution of population and
73 of the uses of land for urbanization, trade, industry, habi-
74 tation, recreation, agriculture, forestry and other pur-
75 poses as will tend:

76 1. To create conditions favorable to health, safety, trans-
77 portation, prosperity, civic activities and recreational,
78 educational and cultural opportunities;

79 2. To reduce the wastes of physical, financial or human
80 resources which result from either excessive congestion or
81 excessive scattering of population; and

82 3. Toward the efficient and economic utilization, con-
83 servation and production of the supply of food and water
84 and of drainage, sanitary and other facilities and resources.

CHAPTER 24

(House Bill No. 70—By Mr. Gilmore and Mr. Ford)

[Passed February 8, 1962; in effect from passage. 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-a, relating to nonresident commercial shooting preserve hunting 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-a, to read as follows:

Article 2. Game and Fish.

Section

46-b. Class M nonresident commercial shooting preserve license.

Section 46-a. Class M Nonresident Commercial Shooting Preserve License.—A Class M license shall be a nonresident commercial shooting preserve license to hunt stocked game on commercial shooting preserve licensed under section fifty-four. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be three dollars for a period of any five consecutive days.

CHAPTER 25

(House Bill No. 30—By Mr. Speaker, Mr. Singleton)

[Passed February 7, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact sections one and five, article two, chapter twenty-four of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to the jurisdiction of the public service commission generally and extending its jurisdiction to and supervisory authority over any utility engaged in the transportation of coal and its derivatives and all mixtures and combinations thereof with any substance by pipe lines.

Be it enacted by the Legislature of West Virginia:

That sections one and five, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 2. Powers and Duties of Public Service Commission.

Section

1. Jurisdiction of commission.
5. Supervision of public utilities licensed by municipalities, county courts or otherwise; right to enter premises, inspect and correct meters.

Section 1. Jurisdiction of Commission.—The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipe line; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipe line; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; toll bridges, wharves, ferries; and any other public service.

Sec. 5. Supervision of Public Utilities Licensed by Municipalities, County Courts or Otherwise; Right to Enter Premises, Inspect and Correct Meters.—The commission

4 shall have general supervision of all public utilities hav-
5 ing authority under any charter or franchise of any city,
6 town or municipality, county court, or tribunal in lieu
7 thereof, or otherwise, to lay down and maintain wires,
8 pipes, conduits, ducts or other fixtures in, over or under
9 streets, highways or public places for the purpose of
10 furnishing and distributing gas, or for furnishing and
11 transmitting electricity for light, heat or power, or main-
12 taining underground conduits, or ducts for electrical
13 conductors, or for telegraph or telephone purposes, and
14 for the purpose of furnishing water, either for domestic
15 or power purposes, and shall have general supervision
16 of oil and gas pipe lines, and shall have general super-
17 vision over any utility engaged in the transportation of
18 coal and its derivatives and all mixtures and combinations
19 thereof with any substance by pipe lines.

20 The commission may ascertain the quantity of water,
21 or the quality and quantity of gas or electricity supplied
22 by such utilities and examine the methods employed,
23 and shall have power to order such improvements as will
24 best promote the public interests.

25 The commission shall have power, through its mem-
26 bers, inspectors, or employees to enter in, upon and to
27 inspect the property, buildings, plants, fixtures, power
28 houses and offices of any such utilities or municipalities,
29 and shall have power to examine the books and affairs
30 to be investigated by it. The commission shall, when
31 and as necessary, appoint inspectors of gas, electric and
32 water meters. And, when such inspectors are required
33 to act, it shall be their duty to inspect, examine, prove
34 and ascertain the accuracy of any gas, electric, or water
35 meters used or intended to be used for measuring or
36 ascertaining the quantity of gas, electricity or water
37 furnished to, by or for the use of any person, firm or
38 corporation, and, when found to be correct, or made cor-
39 rect, the inspector shall stamp or mark each of such
40 meters with some suitable device, which device shall be
41 recorded in the office of the commission. No public
42 utility shall furnish or put in use any gas, electric or
43 water meter which shall not have been inspected, proved

44 and stamped or marked by an inspector of the commis-
45 sion: *Provided*, That in cases of emergency, gas, electric
46 or water meters may be installed and used before being
47 inspected, but notice thereof shall be immediately given
48 to the public service commission by the public utility
49 installing the same, and such meters shall be inspected,
50 proved and stamped or marked, as soon thereafter as
51 practicable. Every gas, electric and water utility shall
52 provide and keep in and upon its premises suitable and
53 proper apparatus, to be approved and stamped or marked
54 by the commission, for testing and proving the accuracy
55 of gas, electric and water meters furnished for use by it
56 and by which apparatus every meter may and shall be
57 tested on the written request of the consumer to whom
58 the same shall be furnished, and in his presence if he
59 so desires.

60 If any person, firm or corporation to or by whom a
61 meter has been furnished shall request the commission
62 in writing to inspect such meter, the commission shall
63 have the same inspected and tested. If the same on being
64 tested shall be found to be two per cent from being cor-
65 rect, or shall be found to be to the prejudice of the user,
66 the inspector shall order the owner of such meter forth-
67 with to remove the same and to place instead thereof
68 a correct meter. The expense of such inspecting and test-
69 ing shall be borne by the owner if such meter be found
70 to be incorrect by two per cent or more. If the meter, on
71 being so tested, shall be found to be correct, or within
72 two per cent of being correct, the expense of such in-
73 spection and testing shall be borne by the user. A uni-
74 form charge and rule shall be fixed by the commission
75 for this service: *Provided*, That nothing in this chapter
76 shall prevent the commission from changing and modify-
77 ing the method of inspecting meters and adopting such
78 rules and regulations therefor as to the commission may
79 seem just and proper.

CHAPTER 26

(Com. Sub. for House Bill No. 22—Originating in the
House Committee on the Judiciary)

[Passed February 8, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to building and construction notices to be filed with assessors in certain instances, and penalties for noncompliance therewith.

Be it enacted by the Legislature of West Virginia:

That article three, chapter eleven 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-a, to read as follows:

Article 3. Assessments Generally.

Section

3-a. Building or real property improvement notice; notice filed with assessors; when not required; penalties.

Section 3-a. Building or Real Property Improvement

2 Notice; Notice Filed with Assessors; When Not Required;
3 Penalties.—Any person, corporation, association or other
4 owner of real property, subject to the payment of prop-
5 erty tax, who shall hereafter erect any building or struc-
6 ture, or who shall add to, enlarge, move, alter, convert,
7 extend, raze or demolish any building or structure, where-
8 by the value of the said real property shall be improved
9 more than one thousand dollars, shall give notice in
10 writing to the assessor within sixty days after the com-
11 mencement of the improvement to such property. The
12 notice shall be given upon such forms as may be pre-
13 scribed by the tax commissioner who shall furnish the
14 same to assessors. The notice shall contain the following
15 information: (1) A statement that improvements are be-
16 ing or have been made; (2) the location or address of the

17 property; and (3) the name of the owner or owners of the
18 property. The information contained in such notice shall
19 be advisory in nature and may be used by the assessor
20 in performing his duties as otherwise provided by law:
21 *Provided, however,* That a report made by or on behalf
22 of any mine, mill, factory, or other industrial establish-
23 ment and filed with the assessor on or before June fifteen
24 which discloses with certainty any construction, or im-
25 provement made during the previous twelve months, shall
26 be deemed compliance with this section: *And provided*
27 *further,* That within the area of any county or munici-
28 pality where a building permit has been obtained prior
29 to beginning such work, the delivery of a copy of the
30 building permit to the assessor by the owner or the issuing
31 authority shall be sufficient notice under this section. Any
32 person who shall violate the provisions of this section
33 shall be guilty of a misdemeanor, and, upon conviction
34 thereof, shall be fined not less than ten dollars nor more
35 than one hundred dollars in the discretion of the court.
36 Justices of the peace shall have concurrent jurisdiction
37 with other courts having jurisdiction for the trial of all
38 misdemeanors arising under this section.

CHAPTER 27

(Senate Bill No. 56—By Mr. Kaufman)

[Passed February 7, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact sections one and five, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to privilege tax on certain carrier corporations, and in particular to provide a definition of "barrel-miles" in the case of liquid coal or slurry as that term is used in said article, and to provide a measurement of business done in West Virginia by coal pipeline corporations for

the purpose of imposing an additional privilege tax on such corporations.

Be it enacted by the Legislature of West Virginia:

That sections one and five, 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 12-a. Privilege Tax on Certain Carrier Corporations.

Section

1. Definitions.

- 5. Additional privilege tax on net income of business included in preceding section; computing tax.**

Section 1. Definitions.—When used in this article the

2 term “company” shall include any partnership, joint ad-
3 venture, joint stock company or association.

4 The phrase “motor vehicle carrier” shall mean any
5 person engaged in the transportation of passengers or
6 property, or both, for compensation by motor propelled
7 vehicle for the operation of which a permit or certificate
8 of convenience or convenience and necessity is required
9 by law.

10 The term “ton-mile” shall be a unit of transportation
11 meaning transportation of one net ton in weight a dis-
12 tance of one mile.

13 The term “passenger-mile” means the transportation
14 of one passenger a distance of one mile.

15 The term “car-mile” means the operation of a railroad
16 car over a distance of one mile.

17 The term “barrel-mile” means the transportation of the
18 equivalent of a barrel of oil or the transportation of the
19 equivalent of a barrel of liquid coal or slurry a distance
20 of one mile.

21 The phrase “one thousand cubic feet-mile” means the
22 transportation of one thousand cubic feet of gas, measured
23 at sixty degrees Fahrenheit and a pressure of thirty
24 inches of mercury a distance of one mile.

25 The term “wire-mile” means the equivalent of a single
26 metallic telephone or telegraph conductor one mile in
27 length.

28 The phrase "motor vehicle mile" means the operation
29 of a motor vehicle carrier over a distance of one mile.

Sec. 5. Additional Privilege Tax on Net Income of Business Included in Preceding Section; Computing Tax.—In
2 addition to the tax imposed in the preceding sections,
3 every motor vehicle carrier operating on the public high-
4 ways of the state and every railroad corporation, rail-
5 road car corporation, express corporation or company,
6 pipeline corporation, telephone and telegraph corpora-
7 tion, airline corporation or company, and operator of a
8 steamboat or other watercraft, for the transportation
9 of passengers or freight, doing business in this state
10 shall pay an annual privilege tax for each calendar year
11 for the privilege of doing business in the state, to be
12 determined as follows:
13

14 (a) The tax as to motor vehicle carriers shall be equal
15 to one and one-half per cent of the net income earned
16 within the state, such income to be determined by as-
17 certaining a sum bearing the proportion to the total
18 net income of the motor vehicle carrier that its business
19 done in West Virginia, measured in motor vehicle miles
20 of motor vehicle carrier operation, bears to all business
21 done, measured in like fashion;

22 (b) The tax as to railroad corporations shall be equal
23 to four per cent of the net income earned within the
24 state, such income to be determined by ascertaining a
25 sum bearing the proportion to total net income of the
26 corporation that its business done in West Virginia,
27 measured in ton-miles, bears to all business done, mea-
28 sured in like fashion;

29 (c) The tax as to railroad car corporations and as to
30 express corporations or companies shall be one and one-
31 half per cent of net income earned within the state, such
32 income to be determined by ascertaining a sum bearing
33 the proportion to the total net income of the corporation
34 or company that its business done in West Virginia,
35 measured in car-miles of car operation, bears to all busi-
36 ness done, measured in like fashion: *Provided, however,*
37 That nothing in this act shall be construed as applying

38 to railroad freight car corporations not owned by railroad
39 corporations or their subsidiaries;

40 (d) The tax as to pipeline corporations shall be three
41 and one-half per cent of net income earned within the
42 state, such income to be determined by ascertaining a
43 sum bearing the proportion to the total net income of
44 the corporation that its business done in West Virginia,
45 measured in barrel-miles in the case of oil and liquid
46 coal or slurry and of thousand cubic feet-miles in the
47 case of gas, bears to all business done, measured in like
48 fashion;

49 (e) The tax as to telephone and telegraph corpora-
50 tions shall be two and three-fourths per cent of net
51 income earned within the state as to telephone corpora-
52 tions, and five per cent as to telegraph corporations, such
53 income to 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 wire-miles, bears to all business done, measured in like
57 fashion;

58 (f) The tax as to airline corporations and operators
59 of a steamboat or other watercraft, for the transporta-
60 tion of passengers or freight, shall be three per cent of
61 net income earned within the state, such income to be
62 determined by ascertaining a sum bearing the propor-
63 tion to the total net income of the corporation that its
64 business done in West Virginia, measured in passenger-
65 miles in the case of airline corporations and ton-miles
66 in the case of the operator of a steamboat or other water-
67 craft, bears to all business done, measured in like fashion;

68 (g) In computing the tax imposed by this section the
69 total net income of a taxpayer, who shall have been
70 taxed under the preceding section, shall be reduced by
71 an amount bearing the proportion to such total net in-
72 come that the gross income of the taxpayer which is the
73 measure of the tax under the preceding section bears
74 to its total gross income from all business done wherever
75 conducted. This section shall not apply to a taxpayer
76 taxed under the preceding section and engaged exclu-
77 sively in business within this state.

CHAPTER 28

(Com. Sub. for House Bill No. 13—Originating in the
House Committee on the Judiciary)

[Passed February 3, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight-c and eight-e, article twelve-a; sections seven-b and eight-a, article thirteen; sections twenty-four-b and twenty-four-f, article fifteen; and section fifteen, article fifteen-a, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain notices required under the carrier corporation privilege tax, business and occupation tax, consumers sales tax and use tax laws, and providing that such notices may be given by certified mail.

Be it enacted by the Legislature of West Virginia:

That sections eight-c and eight-e, article twelve-a; sections seven-b and eight-a, article thirteen; sections twenty-four-b and twenty-four-f, article fifteen; and section fifteen, article fifteen-a, all of 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

- 12-a. Privilege Tax on Certain Carrier Corporations.
- 13. Business and Occupation Tax.
- 15. Consumers Sales Tax.
- 15-a. Use Tax.

Article 12-a. Privilege Tax on Certain Carrier Corporations.

Section

- 8-c. Notice of assessment; petition for reassessment; hearing.
- 8-e. Service of notice required by article.

Section 8-c. Notice of Assessment; Petition for Re-assessment; Hearing.—The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by certified mail, file

8 with the tax commissioner a petition in writing, verified
9 under oath by said taxpayer or his duly authorized agent,
10 having knowledge of the facts, setting forth with definite-
11 ness and particularity the items of the assessment ob-
12 jected to, together with the reason for such objections,
13 said assessments shall become due and be deemed con-
14 clusive and the amount thereof shall be payable at the
15 end of the thirty-day period. In every case where a peti-
16 tion for reassessment as above described is filed, the
17 tax commissioner shall assign a time and place for the
18 hearing of same and shall notify the petitioner of such
19 hearing by written notice at least twenty days in advance
20 thereof and such hearing shall be held within sixty days
21 from the filing of the petition for reassessment unless
22 continued by agreement or by the tax commissioner for
23 good cause. The hearing shall be informal and may be
24 conducted by an examiner designated by the tax com-
25 missioner. At such hearing evidence may be offered to
26 support the assessment or to prove that it is incorrect.
27 After such hearing the tax commissioner shall, within a
28 reasonable time, give notice in writing of the decision.
29 Unless an appeal is taken within thirty days from service
30 of this notice, the tax commissioner's decision shall be
31 final.

Sec. 8-e. Service of Notice Required by Article.—Any
2 written notice required by this article shall, unless other-
3 wise specifically provided, be served upon the taxpayer
4 personally or by certified mail.

Article 13. Business and Occupation Tax.

Section

7-b. Notice of assessment; petition for reassessment; hearing.

8-a. Service of notice.

Section 7-b. Notice of Assessment; Petition for Re-
2 **assessment; Hearing.**—The tax commissioner shall give
3 to the taxpayer written notice of any assessment made
4 pursuant to this article. Unless the taxpayer to whom a
5 notice of assessment is directed shall, within thirty days
6 after service thereof (except in the case of jeopardy as-
7 sessments), either personally or by certified mail, file with
8 the tax commissioner a petition in writing, verified un-
9 der oath by said taxpayer or his duly authorized agent,

10 having knowledge of the facts, setting forth with definite-
11 ness and particularity the items of the assessment ob-
12 jected to, together with the reason for such objections,
13 said assessment shall become and be deemed conclusive
14 and the amount thereof shall be payable at the end of the
15 thirty-day period. In every case where a petition for re-
16 assessment as above described is filed, the tax com-
17 missioner shall assign a time and place for the hearing
18 of same and shall notify the petitioner of such hearing by
19 written notice at least twenty days in advance thereof
20 and such hearing shall be held within sixty days from the
21 filing of the petition for reassessment unless continued
22 by agreement or by the tax commissioner for good cause.
23 The hearing shall be informal and may be conducted by
24 an examiner designated by the tax commissioner. At
25 such hearing evidence may be offered to support the as-
26 sessment or to prove that it is incorrect. After such hear-
27 ing the tax commissioner shall, within a reasonable time,
28 give notice in writing of the decision. Unless an appeal
29 is taken within thirty days from service of this notice, the
30 tax commissioner's decision shall be final.

2 **Sec. 8-a. Service of Notice.**—Any written notice re-
3 quired by this article shall, unless otherwise specifically
4 provided, be served upon the taxpayer personally or by
5 certified mail.

Article 15. Consumers Sales Tax.

Section

24-b. Notice of assessment; petition for reassessment; hearing.
24-f. Service of notice.

2 **Section 24-b. Notice of Assessment; Petition for Re-**
3 **assessment; Hearing.**—The tax commissioner shall give
4 to the taxpayer written notice of any assessment made
5 pursuant to this article. Unless the taxpayer to whom a
6 notice of assessment is directed shall, within thirty days
7 after service thereof, (except in the case of jeopardy as-
8 sessments) either personally or by certified mail, file with
9 the tax commissioner a petition in writing, verified under
10 oath by said taxpayer or his duly authorized agent, hav-
11 ing knowledge of the facts, setting forth with definiteness
and particularity the items of the assessment objected to,

12 together with the reason for such objections, said assess-
13 ments shall become and be deemed conclusive and the
14 amount thereof shall be payable at the end of the thirty-
15 day period. In every case where a petition for reassess-
16 ment as above described is filed, the tax commissioner
17 shall assign a time and place for the hearing of same and
18 shall notify the petitioner of such hearing by written
19 notice at least twenty days in advance thereof and such
20 hearing shall be held within sixty days from the filing
21 of the petition for reassessment unless continued by agree-
22 ment or by the tax commissioner for good cause. The hear-
23 ing shall be informal and may be conducted by an exam-
24 iner designated by the tax commissioner. At such hearing
25 evidence may be offered to support the assessment or to
26 prove that it is incorrect. After such hearing the tax
27 commissioner shall, within a reasonable time, give notice
28 in writing of the decision. Unless an appeal is taken
29 within thirty days from service of this notice, the tax
30 commissioner's decision shall be final.

Sec. 24-f. Service of Notice.—Any written notice re-
2 quired by this article shall, unless otherwise specifically
3 provided, be served upon the taxpayer personally or by
4 certified mail.

Article 15-a. Use Tax.

Section

15. Service of notice.

Section 15. Service of Notice.—Any notice, except
2 notice of appeal, authorized or required under the pro-
3 visions of this article may be given by mailing the same
4 to the person for whom it is intended by certified mail,
5 addressed to such person at the address given in last
6 return filed by him pursuant to the provisions of this
7 article, or if no return has been filed, then to such address
8 as may be obtainable. The mailing of such notice shall
9 be presumptive evidence of the receipt of the same by
10 the person to whom addressed. Any period of time which
11 is determined according to the provisions of this article
12 by the giving of notice shall commence to run from the
13 date of certification and posting of such notice.

CHAPTER 29

(Senate Bill No. 48—By Mr. Gainer and Mr. Jackson)

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of tax on gasoline used for certain purposes.

Be it enacted by the Legislature of West Virginia:

That section twenty, 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 Tax.

Section

20. Refund of tax on gasoline used for certain purposes.

Section 20. Refund of Tax on Gasoline Used for Certain

2 **Purposes.**—Any person who shall buy in quantities of
3 twenty-five gallons or more, at any one time, gasoline
4 as defined by this article, for the purpose of and the same
5 is actually used (a) as a motor fuel for diesel engines not
6 operated upon the public highways or streets of this state,
7 or (b) as a motor fuel to operate tractors and gas engines
8 or threshing machines for agricultural purposes, when
9 such operation is not, in whole or in part, upon the public
10 highways or streets of this state, or (c) by any railway
11 company subject to regulation by the public service com-
12 mission of West Virginia, for any purpose other than
13 upon the public highways or streets of this state, or
14 (d) in the business of manufacturing or producing natural
15 resources or in mining or drilling therefor, or in the trans-
16 portation of natural resources solely by means of un-
17 licensed vehicles or vehicles licensed under the motor
18 vehicle laws of this state, either as a motor fuel or for any
19 other purpose and which gasoline is not in any part used
20 upon the public highways and streets of this state, or
21 (e) as a motor fuel in motor boats or other water craft
22 operated upon the navigable streams of this state, may, if

23 the gasoline tax imposed by this article shall have previ-
24 ously been paid upon such gasoline, be refunded a sum
25 equal to the amount of such tax, upon presenting to the
26 tax commissioner an affidavit accompanied by original or
27 top copy sales slips or invoices, or certified copies thereof,
28 from the distributor or retail dealer, showing such pur-
29 chases, together with evidence of payment thereof, which
30 affidavit shall set forth the total amount of such gasoline
31 purchased and used by such consumer, other than upon
32 any public highways, streets or alleys of this state, and
33 how used; and the tax commissioner upon the receipt of
34 such affidavit and such paid sales slips or invoices shall
35 cause to be refunded such tax paid on gasoline purchased
36 and used as aforesaid. The right to receive any refund
37 under the provisions of this article shall not be assign-
38 able and any assignment thereof shall be void and of no
39 effect. Nor shall any payment be made to any person
40 other than the original person entitled thereto using
41 gasoline as hereinbefore in this section set forth: *Pro-*
42 *vided*, That the tax commissioner shall cause refund to
43 be made under authority of this section only when appli-
44 cation for refund is filed with the tax commissioner, upon
45 forms prepared and furnished by the tax commissioner,
46 within ninety days from the date of purchase or delivery
47 of the gasoline: *Provided, however*, That any claim for
48 refund not filed within ninety days from the date of pur-
49 chase or delivery of the gasoline shall not be construed
50 to be or constitute a moral obligation of the state of West
51 Virginia for payment.

CHAPTER 30

(Senate Bill No. 26—By Mr. Carson, Mr. President,
and Mr. McCourt)

[Passed January 22, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article four-
teen, chapter eleven of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to taxes to be used for road purposes.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, 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 Tax.

Section

22. Taxes to be used for road purposes.

Section 22. Taxes to Be Used for Road Purposes.—All
2 taxes collected under the provisions of this article shall be
3 paid into the state treasury and shall be used only for the
4 purpose of the construction, reconstruction, maintenance
5 and repair of roads and highways, payment of the interest
6 and sinking fund on state bonds issued for road purposes
7 and the cost of administration and enforcement of this ar-
8 ticle by the tax commissioner, which cost of administra-
9 tion and enforcement shall not exceed three fourths of one
10 per cent of the total net gasoline excise tax collections
11 during the fiscal year commencing July one, one thou-
12 sand nine hundred sixty-two, and each fiscal year there-
13 after.

14 Unless necessary for such bond requirements, five
15 fourteenths of the taxes collected under the provisions of
16 this article shall be used for secondary road purposes.

CHAPTER 31

(Senate Bill No. 39—By Mr. McCourt)

[Passed February 1, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to additional consumers sales tax.

Be it enacted by the Legislature of West Virginia:

That section three-a, article fifteen, 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 15. Consumers Sales Tax.

Section

3-a. Additional consumers sales tax.

Section 3-a. Additional Consumers Sales Tax.—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight of this article, the vendor, in addition to the tax imposed by section three of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent (\$.01) on each one dollar (\$1.00) of monetary consideration, or fraction thereof, in excess of one dollar (\$1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission and assessment of the consumers sales tax imposed by section three of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

It is the intent of the Legislature in imposing this additional tax to provide funds to the governor, the state road commissioner and the state department of natural resources for the emergency relief of unemployment throughout the state of West Virginia.

The provisions of this section shall expire June thirtieth, one thousand nine hundred sixty-three.

CHAPTER 32

(Senate Bill No. 38—By Mr. McCourt)

[Passed February 1, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article fifteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an additional use tax; more particularly imposing an additional use tax; making provision relating to its levy, imposition, exemptions, payment, collection, remission and assessment; providing that all moneys derived therefrom shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law, and providing that the provisions of said section two-a shall take effect upon the expiration of the additional use tax and the provisions in connection therewith as imposed and provided by chapter thirteen, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty-one, and that the provisions of said section two-a shall expire on June thirtieth, one thousand nine hundred sixty-three.

Be it enacted by the Legislature of West Virginia:

That section two-a, article fifteen-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 15-a. Use Tax.

Section

2-a. Additional use tax.

Section 2-a. Additional Use Tax.—For the purpose of
2 providing additional revenue for the state fund, general
3 revenue, there is hereby imposed, other than in this sec-
4 tion two-a to the contrary, an additional excise (use) tax
5 in the same form, manner and extent as in section two of
6 this article provided; said additional excise (use) tax is
7 imposed at the rate of one per cent of the purchase price
8 of such property, with the first one dollar of such purchase

9 price being exempt for the purpose of computing the addi-
10 tional excise tax imposed by this section two-a.

11 Except as otherwise provided in this section, all provi-
12 sions of this article relating to the levy, imposition, exemp-
13 tions, payment, collection, remission and assessment of
14 the excise tax imposed by section two of this article shall
15 be applicable to the levy, imposition, exemptions, pay-
16 ment, collection, remission and assessment of such addi-
17 tional tax as imposed by this section two-a.

18 Notwithstanding the provisions of section twenty-six
19 of this article, all moneys received from the additional tax
20 imposed by this section shall be paid into the state fund,
21 general revenue, to be expended in whatever manner pro-
22 vided by law.

23 The provisions of this section shall take effect upon the
24 expiration of the additional use tax and the provisions in
25 connection therewith as imposed and provided by chapter
26 thirteen, acts of the Legislature, first extraordinary ses-
27 sion, one thousand nine hundred sixty-one, and the pro-
28 visions of this section shall expire on June thirtieth,
29 one thousand nine hundred sixty-three.

CHAPTER 33

(Senate Bill No. 41—By Mr. McCourt)

[Passed January 25, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section two-b, article seventeen,
and section two, article eighteen, chapter eleven of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to the imposition, collection and
disposition of an additional tax on the sale of cigarettes,
and upon the use, consumption or storage of cigarettes in
this state, and declaring the purpose thereof.

Be it enacted by the Legislature of West Virginia:

That section two-b, article seventeen, and section two, article
eighteen, 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

17. Excise Tax on Sale of Cigarettes.

18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Article 17. Excise Tax on Sale of Cigarettes.

Section

2-b. Additional cigarette tax for support of schools.

Section 2-b. Additional Cigarette Tax for Support of Schools.—For the purpose of providing additional revenue for the support of free schools, there is hereby levied and imposed, on and after midnight of the last day of June, one thousand nine hundred sixty-two, in addition to the taxes imposed by sections two and two-a of this article, an additional excise tax of two cents on each ten cigarettes, or fractional part thereof, sold within this state. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular excise tax on the sale of cigarettes shall be applicable to the levy, imposition and collection of such additional tax. Notwithstanding other provisions of this article to the contrary, all moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration and operation, shall be paid by the tax commissioner into the general school fund, to be used solely for the support of free schools: *Provided, however,* That the additional one-cent tax on each ten cigarettes or fractional part thereof imposed or levied by this section shall be suspended on the last day of June, one thousand nine hundred sixty-three.

Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.

Section

2. Levy of tax on cigarettes.

Section 2. Levy of Tax on Cigarettes.—For the purpose of providing revenue for the general fund of this state an excise tax is hereby levied, on and after midnight of the last day of June, one thousand nine hundred sixty-two, on the use, consumption or storage of cigarettes by

6 consumers in this state at the rate of three cents on each
7 ten cigarettes or fractional part thereof: *Provided, how-*
8 *ever,* That the tax shall not apply if the tax levied in
9 article seventeen of this chapter has been paid: *Provided*
10 *further,* That the additional one-cent tax on each ten
11 cigarettes or fractional part thereof imposed or levied by
12 this section shall be suspended on the last day of June,
13 one thousand nine hundred sixty-three.

CHAPTER 34

(Senate Bill No. 50—By Mr. Handlan)

[Passed February 7, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the excise tax on the privilege of transferring real property, by extending the exclusions to provide that the term "document" as used in said article shall not include transfers between parent and child and his or her spouse without consideration.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, 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 22. Excise Tax on Privilege of Transferring Real Property.

Section

1. Definitions.

Section 1. Definitions.—The following words when used
2 in this chapter shall have meanings ascribed to them in
3 this section, except in those instances where the context
4 clearly indicates a different meaning:
5 "Association" means a partnership, limited partnership
6 or any other form of unincorporated enterprise, owned
7 or conducted by two or more persons.

8 "Corporation" means a corporation or joint-stock as-
9 sociation, organized under the laws of this state, the
10 United States or any other state, territory, or foreign
11 country or dependency, including, but not limited to,
12 banking institutions.

13 "Commissioner" means the state tax commissioner.

14 "Document" means any deed, or instrument or writing
15 whereby any real property within this state or any in-
16 terest therein shall be granted, conveyed or otherwise
17 transferred to the grantee, purchaser or any other person;
18 but does not include wills, transfer of real property where
19 the value of the property transferred is one hundred
20 dollars or less, testamentary or inter vivos trusts, deeds
21 of partition, deeds made pursuant to mergers of corpora-
22 tions, deeds made by a subsidiary corporation to its parent
23 corporation for no consideration other than the cancella-
24 tion or surrender of the subsidiary's stock, leases, trans-
25 fers between husband and wife, transfers between parent
26 and child, or transfers between parent and child and his
27 or her spouse, without consideration, transfers without
28 consideration between a principal and straw party for any
29 purpose, gifts to or transfers from or between voluntary
30 charitable or educational associations or trustees thereof
31 and like nonprofit corporations having the same or similar
32 purposes, quitclaim or corrective deeds without consider-
33 ation, transfers to or from the United States, the state of
34 West Virginia, or to or from any of their instrumentalities,
35 agencies or political subdivisions, by gift, dedication, deed
36 or condemnation proceedings, or mortgages or deeds of
37 trust given as security for a debt.

38 "Person" means every natural person, association, or
39 corporation. Whenever used in any clause prescribing
40 and imposing a fine or imprisonment, or both, the term
41 "person" as applied to associations, shall mean the part-
42 ners or members thereof, and, as applied to corporations,
43 the officers thereof.

44 "Transaction" means the delivering, accepting or pre-
45 senting for recording of a document.

46 "Value" means in the case of any document not a gift,
47 the amount of the full actual consideration therefor, paid
48 or to be paid, including the amount of any lien or liens

49 assumed; in the case of a gift, or any other document
50 without consideration, the actual monetary value of the
51 property conveyed or transferred. In the event any docu-
52 ment includes real property or any interest therein lying
53 outside the state of West Virginia or includes personal
54 property, value shall be the proportion of the considera-
55 tion paid in case of the transfer for consideration, or the
56 proportion of the true and actual value in case of a gift,
57 which the actual value of the real property located in
58 West Virginia bears to the total actual value of all the
59 property, real or personal, transferred by the document.
60 The value as herein defined shall be stated in the declara-
61 tion of consideration or value provided for in section six
62 hereof.

CHAPTER 35

(Com. Sub. for Senate Bill No. 42—Originating in the
Senate Committee on Finance)

[Passed February 8, 1962; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and nine, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxes to be paid by and the financial responsibility of licensees conducting horse racing within the state, and to the regulation and control of horse racing.

Be it enacted by the Legislature of West Virginia:

That sections seven and nine, article twenty-three, 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 23. Horse Racing.

Section

7. *Per diem tax on tracks; tax on pool contribution; how taxes paid; financial responsibility of licensees; contents of license.*
9. *Only pari-mutuel system of wagering permitted; commission of licensee on pari-mutuel pools; minors; auditor.*

Section 7. Per Diem Tax on Tracks; Tax on Pool Contribution; How Taxes Paid; Financial Responsibility of Licensees; Contents of License.—Any person conducting thoroughbred or running type racing, and/or harness type racing at any horse race track one mile or more in length shall pay each day upon which horse races are run, a license tax of five hundred dollars; any race track less than one mile in length shall pay for each day upon which horse races are run a license tax of two hundred fifty dollars: *Provided*, That the per diem tax shall not apply to horse shows or county fairs at which racing is conducted for not more than six days. Any person licensed by the commission to conduct thoroughbred or running type racing and to permit and conduct pari-mutuel wagering under this article shall, in addition to the aforementioned tax, pay to the racing commission of the state of West Virginia a tax of six per cent of the total contribution to all pari-mutuel pools conducted or made at any and every race meeting licensed under this article: *Provided, however*, That on and after the first day of July, one thousand nine hundred sixty-three, said tax shall be reduced to five per cent of said contributions. Such payments shall be made to the commission or its agent after the last race on each day and every day of each and every race meeting, and shall be made from all contributions to all pari-mutuel pools to each and every race of the day, which payment shall be deposited with the treasurer of the state of West Virginia to the credit of the general revenue fund.

Any person licensed by the commission to conduct harness type horse racing and to permit and conduct pari-mutuel wagering under this article shall, in addition to the aforementioned license tax, pay to the racing commission of the state of West Virginia, from the commission deducted each day by the licensee from the pari-mutuel pools, as a tax, five per cent of the first one hundred thousand dollars wagered, or any part thereof; six per cent of the next one hundred fifty thousand dollars; and seven per cent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness horse race meeting licensed under this article. Such payments shall be made to the commission

42 or its agent after the last race on each day and every day
43 of each and every race meeting, and shall be made from
44 all contributions to all pari-mutuel pools to each and every
45 race of the day, which payment shall be deposited with
46 the treasurer of the state of West Virginia to the credit
47 of the general revenue fund.

48 Any person making application for a license for a meet-
49 ing to be held on any track in the state of West Virginia,
50 shall, when required, furnish satisfactory evidence to
51 the commission of his or their ability to pay license fees,
52 purses, salaries of officials and other expenses incident to
53 the meeting. In the event the applicant is not able to
54 furnish such satisfactory evidence of his or their ability
55 to pay such expenses and fees, then the commission may
56 require bond or other adequate security for not more
57 than four successive days before such license is issued.

58 When issuing any license under this article, the com-
59 mission shall designate upon the face of the license, the
60 kind or type of horse racing for which the same is issued,
61 the number of days the licensee is permitted to conduct
62 horse racing of any kind, the location of the place or track
63 or enclosure at which the horse racing thereby permitted,
64 is to be conducted, and such other provisions and condi-
65 tions as the commission may wish to prescribe; no kind
66 or type of horse racing shall be conducted by a licensee
67 other than that for which the license is issued.

Sec. 9. Only Pari-Mutuel System of Wagering Per-
2 **mitted; Commission of Licensee on Pari-Mutuel Pools;**
3 **Minors; Auditor.**—A person licensed by the commission
4 shall permit only the pari-mutuel system of wagering
5 within the enclosure at which horse racing is held, and
6 the commission deducted by any thoroughbred or running
7 horse race licensee from the said pari-mutuel pools shall
8 not exceed fifteen per cent and the commission deducted
9 by any harness horse race licensee from the said pari-
10 mutuel pools shall not exceed seventeen per cent of the
11 total pari-mutuel pools for the day, including the license
12 fee of the gross amount handled hereinbefore provided
13 for, plus the breakage, which shall be made and calculated
14 to the dime. Such breakage shall be retained by the
15 licensee: *Provided, however,* That on and after the first

16 day of July, one thousand nine hundred sixty-three, the
17 said commission so deducted by any thoroughbred or
18 running horse race licensee shall not exceed fourteen per
19 cent and said commission so deducted by any harness
20 horse racing licensee shall not exceed sixteen per cent.

21 No holder of such license shall permit or allow any per-
22 son under the age of twenty-one years to wager thereat,
23 knowing or having reason to believe that such person is
24 under the age of twenty-one years. Any violation of this
25 paragraph shall be punishable by revocation of license.

26 An auditor of pari-mutuel pools shall be appointed by
27 the commission and shall be compensated by said com-
28 mission. He shall be an experienced public accountant.
29 Said auditor shall have free access to the space or en-
30 closure where the pari-mutuel pool system of wagering
31 is conducted or calculated at any race meeting to which
32 he shall be assigned for the purpose of ascertaining
33 whether or not said licensee is retaining only the com-
34 mission provided for in this section. He shall also, for
35 the same purposes only, have full and free access to all
36 records and papers pertaining to such pari-mutuel pool
37 system of wagering, and shall report to the commission
38 in writing, under oath, whether or not the licensee has
39 retained any commissions in excess of those permitted
40 under this article.

CHAPTER 36

(House Bill No. 43—By Mr. Speaker, Mr. Singleton,
and Mr. Boiarsky)

[Passed January 29, 1962; in effect July 1, 1962. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article three,
chapter thirty-three of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to ad-
ditional insurance premium tax.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, article three, 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 3. Licensing, Fees and Taxation of Insurers.

Section

14-a. Additional premium tax.

Section 14-a. Additional Premium Tax.—For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one per cent of such gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of such additional tax.

All moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him into the state treasury for the benefit of the state fund.

The provisions of this section shall expire June thirty, one thousand nine hundred sixty-three.

CHAPTER 37

(Com. Sub. for Senate Bill No. 59—Originating in the
Senate Committee on Roads and Navigation)

[Passed February 8, 1962; in effect ninety days from passage.
Approved by the Governor.]

AN ACT authorizing the county court of Mason county to set aside in a special fund for secondary road purposes any surplus in the general county funds.

Be it enacted by the Legislature of West Virginia:

Section

1. Mason county road fund.

Section 1. Mason County Road Fund.—The county court of Mason county shall have authority to pay any surpluses in the general county fund not needed for general county purposes into a special county road fund. All moneys accumulating in said fund shall, with the consent and approval of the state road commissioner, be expended by the county court of Mason county for the improvement of the secondary roads in Mason county, in the purchase of gravel or crushed stone for said roads and by the purchase of machinery and trucks to crush and transport the stone for said roads, said machinery to be operated by the state road commissioner.

All materials produced or purchased under this act shall meet the standard specifications of the state road commissioner under section 2.15.

CHAPTER 38

(House Bill No. 74—By Mr. Speaker, Mr. Singleton)

[Passed February 8, 1902; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred forty-nine, authorizing the county court of Monongalia county to use unexpended funds or surpluses in any fund of said county for the purpose of creating a special county fund, continuing the special fund heretofore established as a part thereof, enlarging the purpose for which said fund may hereafter be used, prescribing the general purposes for which said fund may hereafter be used, and providing for retransfer of said fund.

Be it enacted by the Legislature of West Virginia:

Section

1. Authorizing the county court of Monongalia county to create a special county fund and prescribing purposes for which said fund may be used.
2. Retransfer of funds.

Section 1. Authorizing the County Court of Monongalia County to Create a Special County Fund and Prescribing Purposes for Which Said Fund May Be Used.—
The county court of Monongalia county is hereby authorized and empowered from year to year to use any unexpended funds of said county and any surplus in any county fund to create a special building and improvement fund. The special fund heretofore created under authority of chapter one hundred eleven, acts of the Legislature, regular session, one thousand nine hundred forty-seven, and chapter one hundred fifty-four, acts of the Legislature, regular session, one thousand nine hundred forty-nine, shall be transferred to this special fund, become a part thereof, and may be used for the purposes herein authorized.

The special fund created by this act may be used for the construction and equipment of a new courthouse; or for the enlarging, remodeling, repairing and improving the present courthouse; or for the purchase of real estate, to be used for county purposes, from the federal government and its agencies or from other persons and parties; and, if necessary, to supplement other county funds needed to meet county expenses in connection with the reappraisal of property within the county.

The county court is hereby authorized to expend and use this fund, including any amount already accumulated, and any additional or other funds hereafter created for the purpose herein authorized.

Sec. 2. Retransfer of Funds.—If found necessary, the county court of Monongalia county is authorized and empowered to retransfer funds from the special fund herein created to the general fund.

CHAPTER 39

(Senate Bill No. 37—By Mr. Riley and Mr. Tompos)

[Passed February 6, 1962; in effect from passage. Approved by the Governor.]

AN ACT to authorize the Board of Commissioners of the County of Ohio to create an airport authority and providing for the membership and purposes of the authority; for the appointment and removal of members; for the acquisition by the authority of real estate and personal property; for the acquisition, construction, improvement, maintenance and operation of a public airport; for corporate existence of the authority; for the issuance of mortgage bonds, revenue bonds, other bonds, debentures, notes and securities, and the giving of security for the payment thereof; for the authority to exercise the power of eminent domain; for tax exemption for the property, funds and obligations of the authority; for acquisition by the authority from the Board of Commissioners of the County of Ohio of the present county airport and the improvement and operation thereof; for the authority to lease the airport; for the Board of Commissioners of the County of Ohio to become the lessee of the airport and pay the rental therefor; for contributions to the funds of the authority by the Board of Commissioners of the County of Ohio and others; for the keeping of the funds and accounts of the authority; for the disposition of any surplus funds; for the covering of the employees of the authority by workmen's compensation; and for dissolution of the authority.

Be it enacted by the Legislature of West Virginia:

Section

1. Wheeling-Ohio county airport authority authorized.
2. Purposes.
3. Members of the authority.
4. Removal of member.
5. Substitution of members.
6. Qualification of members of the authority.
7. Compensation of members of the authority.
8. Authority to be a public corporation.
9. Powers.
10. Indebtedness of the authority.
11. Agreements in connection with obtaining funds.

12. Authority to have right of eminent domain.
13. Property, bonds and obligations of authority exempt from taxation.
14. County commissioners authorized to convey present airport properties and facilities to the authority.
15. Authority may lease airport and facilities to the board of commissioners of the county of Ohio or other lessee.
16. Disposition of surplus of authority.
17. Contributions to authority by the board of commissioners of the county of Ohio and others; funds and accounts of the authority.
18. Employees to be covered by workmen's compensation.
19. Dissolution of authority.
20. Automatic termination of the right to establish the authority.
21. Liberal construction of act.
22. Provisions severable.

Section 1. Wheeling-Ohio County Airport Authority

- 2 **Authorized.**—The Board of Commissioners of the County
3 of Ohio is hereby authorized to create and establish a
4 public agency to be known as the "Wheeling-Ohio County
5 Airport Authority" for the purposes and in the manner
6 hereinafter set forth.

- Sec. 2. Purposes.**—The authority is hereby authorized
2 and empowered to acquire, equip, construct, improve,
3 maintain and operate a public airport with all usual and
4 convenient appurtenances and facilities in Ohio and
5 Brooke counties, West Virginia, to serve as a public air-
6 port for the convenience and accommodation of the in-
7 habitants of Ohio county and the public generally.

- Sec. 3. Members of the Authority.**—The management
2 and control of the Wheeling-Ohio County Airport Au-
3 thority, its property, operations, business and affairs,
4 shall be lodged in a board of five persons who shall be
5 known as "Members of the Authority", each of whom
6 shall be appointed for a term of five years, except that
7 as to the first four appointed to the first board appointed,
8 the term of one member shall expire on the first day of
9 July next ensuing and the term of the next member shall
10 expire on the first day of July two years thereafter, the
11 term of another member shall expire on the first day of
12 July three years thereafter and the term of the remaining
13 member shall expire on the first day of July four years
14 thereafter: *Provided, however,* That the county commis-
15 sioner appointed to serve as a member of the authority,
16 as hereinafter provided, shall not serve for a term as
17 member of the authority which is longer than his term

18 of office as a member of the Board of Commissioners of the
19 County of Ohio.

20 All members shall be appointed by the Board of Com-
21 missioners of the County of Ohio: *Provided, however,*
22 That one member of the authority shall be a member of
23 the Board of Commissioners of the County of Ohio: *Pro-*
24 *vided further,* That of the remaining four members of
25 the authority no more than two shall be members of the
26 same political party, nor shall they hold any political
27 office of any nature.

Sec. 4. Removal of Member.—The members of the
2 authority shall serve at the will and pleasure of the
3 Board of Commissioners of the County of Ohio: *Provided,*
4 *however,* That if the Board of Commissioners of the
5 County of Ohio desires to remove a member of the au-
6 thority it shall notify said member in writing, stating the
7 reasons for the Board of Commissioners of the County of
8 Ohio desiring said removal. Within ten days of the re-
9 ceipt by the member of the authority of the written notice
10 of removal, said member, if he so desires, may have a
11 hearing before the Board of Commissioners of the County
12 of Ohio, and any such hearing shall be held within ten
13 days of the member's written request for said hearing.

Sec. 5. Substitution of Members.—If any member of
2 the authority die, or resign, or be removed, or for any
3 other reason cease to be a member of the authority, the
4 Board of Commissioners of the County of Ohio shall ap-
5 point another person to fill the unexpired portion of the
6 term of such member.

Sec. 6. Qualification of Members of the Authority.—
2 All members of the board of the authority shall be citizens
3 of West Virginia, over thirty years of age, and residents
4 of Ohio county.

Sec. 7. Compensation of Members of the Authority.—
2 No member of the board of the authority shall receive
3 any compensation, whether in form of salary, per diem
4 allowances or otherwise, for or in connection with his
5 services as such member. Each member shall, however,
6 be entitled to reimbursement by the authority for any

7 necessary expenditures in connection with the perform-
8 ance of his general duties as such member.

Sec. 8. Authority to Be a Public Corporation.—The
2 authority when created, and the members thereof, shall
3 constitute and be a public corporation under the name
4 of "Wheeling-Ohio County Airport Authority", and as
5 such shall have perpetual succession, may contract and
6 be contracted with, sue and be sued, plead and be im-
7 pleaded, and have and use a common seal.

Sec. 9. Powers.—The Wheeling-Ohio County Airport
2 Authority is hereby given power and authority as follows:

3 (1) To make and adopt all necessary by-laws, rules
4 and regulations for its organization and operations not
5 inconsistent with law;

6 (2) To elect its own officers, to appoint committees
7 and to employ and fix the compensation for personnel
8 necessary for its operation;

9 (3) To enter into contracts with any person, govern-
10 mental department, firm or corporation, including both
11 public and private corporations, and generally to do any
12 and all things necessary or convenient for the purpose of
13 acquiring, equipping, constructing, maintaining, improv-
14 ing, extending, financing and operating a public airport
15 in Ohio and Brooke counties, West Virginia;

16 (4) To delegate any authority given to it by law to any
17 of its officers, committees, agents or employees;

18 (5) To apply for, receive and use grants in aid, dona-
19 tions and contributions from any source or sources, in-
20 cluding but not limited to the federal government and
21 any agency thereof, and the state of West Virginia, and
22 to accept and use bequests, devises, gifts and donations
23 from any person, firm or corporation;

24 (6) To acquire lands and hold title thereto in its own
25 name;

26 (7) To purchase, own, hold, sell and dispose of personal
27 property and to sell, lease or otherwise dispose of any
28 real estate which it may own;

29 (8) To borrow money and execute and deliver nego-
30 tiable notes, mortgage bonds, other bonds, debentures,
31 and other evidences of indebtedness therefor, and give

32 such security therefor as shall be requisite, including
33 giving a mortgage or deed of trust on its airport proper-
34 ties and facilities in connection with the issuance of mort-
35 gage bonds;

36 (9) To raise funds by the issuance and sale of revenue
37 bonds in the manner provided by the applicable pro-
38 visions of article four-a, chapter eight of the code of West
39 Virginia, one thousand nine hundred thirty-one, as
40 amended, it being hereby expressly provided that the
41 Wheeling-Ohio County Airport Authority is a "municipi-
42 pal authority" within the definition of that term as used
43 in said article four-a, chapter eight of the code; and

44 (10) To expend its funds in the execution of the powers
45 and authority herein given.

Sec. 10. Indebtedness of the Authority.—The authority
2 may incur any proper indebtedness and issue any obliga-
3 tions and give any security therefor which it may deem
4 necessary or advisable in connection with carrying out
5 its purposes as hereinbefore mentioned. No statutory
6 limitation with respect to the nature or amount of in-
7 debtedness which may be incurred by municipalities or
8 other public bodies shall apply to indebtedness of the
9 authority. No indebtedness of any nature of the authority
10 shall constitute an indebtedness of the Board of Commis-
11 sioners of the County of Ohio, nor of said county, or a
12 charge against any property of said county. No obliga-
13 tion incurred by the authority shall give any right
14 against any member of the Board of Commissioners of the
15 County of Ohio or any member of the board of the au-
16 thority. The rights of creditors of the authority shall be
17 solely against the authority as a corporate body and
18 shall be satisfied only out of property held by it in its
19 corporate capacity.

**Sec. 11. Agreements in Connection with Obtaining
2 Funds.**—The authority may, in connection with obtaining
3 funds for its purposes, enter into any agreement with any
4 person, firm or corporation, including the federal gov-
5 ernment, or any agency or subdivision thereof, contain-
6 ing such provisions, covenants, terms and conditions as
7 the authority may deem advisable.

Sec. 12. Authority to Have Right of Eminent Domain.—

2 Whenever it shall be deemed necessary by the authority,
3 in connection with the exercise of its powers herein conferred,
4 to take or acquire any lands, structures or buildings
5 or other rights, either in fee or as easements, for the purposes
6 herein set forth, the authority may purchase the
7 same directly or through its agents from the owner or
8 owners thereof, or failing to agree with the owner or owners
9 thereof, the authority may exercise the power of eminent
10 domain in the manner provided for condemnation
11 proceedings in chapter fifty-four of the code of West Virginia,
12 one thousand nine hundred thirty-one, as heretofore
13 and hereafter amended, and such purposes are hereby
14 declared to be public uses for which private property
15 may be taken or damaged.

Sec. 13. Property, Bonds and Obligations of Authority

2 **Exempt from Taxation.**—The authority shall be exempt
3 from the payment of any taxes or fees to the state or any
4 subdivisions thereof or to any officer or employee of the
5 state or of any subdivisions thereof. The property of the
6 authority shall be exempt from all local and municipal
7 taxes. Bonds, notes, debentures and other evidence of
8 indebtedness of the authority are declared to be issued
9 for a public purpose and to be public instrumentalities,
10 and, together with interest thereon, shall be exempt from
11 taxes.

Sec. 14. County Commissioners Authorized to Convey

2 **Present Airport Properties and Facilities to the Authority.**
3 —The Board of Commissioners of the County of Ohio is
4 hereby authorized to convey to the authority the present
5 airport property owned by the County of Ohio, situate
6 partly in Ohio county and partly in Brooke county, together
7 with all the appurtenances and facilities therewith,
8 such conveyance to be without consideration or for such
9 price and upon such terms and conditions as the Board of
10 Commissioners of the County of Ohio shall deem proper.

Sec. 15. Authority May Lease Airport and Facilities to

2 **the Board of Commissioners of the County of Ohio or**
3 **Other Lessee.**—The authority may lease its airport and
4 all the appurtenances and facilities therewith to the Board

5 of Commissioners of the County of Ohio or to any other
6 available lessee at such rental and upon such terms and
7 conditions as to the authority shall seem proper. If the
8 authority determines to lease the airport and its appur-
9 tenances and facilities, as a whole, it shall first offer the
10 same to the Board of Commissioners of the County of
11 Ohio upon an annual lease, and it shall not lease the air-
12 port and its appurtenances and facilities as a whole to any
13 other lessee until the Board of Commissioners of the
14 County of Ohio has notified the authority that it does not
15 desire to lease said properties, which notice shall be given
16 within thirty days after notice by the authority of a de-
17 sire on its part to lease the airport as a whole. The Board
18 of Commissioners of the County of Ohio is hereby au-
19 thorized to enter into a lease with the authority for said
20 airport, appurtenances and facilities at such rental
21 and upon such terms and conditions as it shall deem prop-
22 er, and the Board of Commissioners of the County of Ohio
23 is hereby authorized to levy taxes as provided by law for
24 the purpose of paying the rent for said airport, appur-
25 tenances and facilities. The authority, however, may lease
26 one or more portions of said airport, not including run-
27 ways and taxiways, without first offering the same to the
28 Board of Commissioners of the County of Ohio. Such lease
29 shall be for some purpose associated with airport activi-
30 ties.

Sec. 16. Disposition of Surplus of Authority.—If the
2 authority should realize a surplus, whether from operating
3 the airport or leasing it for operation, over and above the
4 amount required for the maintenance, improvement and
5 operation of the airport and for meeting all required pay-
6 ments on its obligations, it shall set aside such reserve for
7 future operations, improvements and contingencies as it
8 shall deem proper and shall then apply the residue of
9 such surplus, if any, to the payment of any recognized and
10 established obligations not then due; and after all such
11 recognized and established obligations have been paid off
12 and discharged in full, the authority shall, at the end of
13 each fiscal year, set aside the reserve for future operations,
14 improvements and contingencies, as aforesaid, and then

15 pay the residue of such surplus, if any, to the Board of
16 Commissioners of the County of Ohio, to be used by said
17 Board of Commissioners for general county purposes.

Sec. 17. Contributions to Authority by the Board of
2 **Commissioners of the County of Ohio and Others; Funds**
3 **and Accounts of the Authority.**—Contributions may be
4 made to the authority from time to time by the Board of
5 Commissioners of the County of Ohio and by any persons,
6 firms or corporations that shall desire so to do. All such
7 funds and all other funds received by the authority shall
8 be deposited in such bank or banks as the authority may
9 direct and shall be withdrawn therefrom in such manner
10 as the authority may direct. The authority shall keep
11 strict account of all its receipts and expenditures and shall
12 each quarter make a quarterly report to the Board of
13 Commissioners of the County of Ohio containing an item-
14 ized account of its receipts and disbursements during the
15 preceding quarter. Such report shall be made within sixty
16 days after the termination of the quarter. Within sixty
17 days after the end of each fiscal year, the authority shall
18 make an annual report containing an itemized statement
19 of its receipts and disbursements for the preceding year,
20 and such annual report shall be published once a week
21 for two successive weeks in two newspapers of opposite
22 politics published in Ohio county, West Virginia, and of
23 general circulation in Ohio county, West Virginia. The
24 books, records and accounts of the authority shall be sub-
25 ject to audit and examination by the office of the state tax
26 commissioner of West Virginia and by any other proper
27 public official or body in the manner provided by law.

Sec. 18. Employees to Be Covered by Workmen's Com-
2 **pensation.**—All employees of the authority eligible there-
3 under shall be deemed to be within the workmen's com-
4 pensation act of West Virginia, and premiums shall be
5 paid by the authority to the workmen's compensation
6 fund as required by law.

Sec. 19. Dissolution of Authority.—The authority may
2 at any time pay off and discharge in full all of its indebt-
3 edness, obligations and liabilities, reconvey the airport
4 properties, appurtenances and facilities to the Board of

5 Commissioners of the County of Ohio and be dissolved.
6 Before making such reconveyance of its properties, the
7 authority shall first publish notice of its intention so to
8 do and of its intention to be dissolved, once a week for
9 four successive weeks in two newspapers of opposite
10 politics published in, and of general circulation in Ohio
11 county, West Virginia. Certificates from the publishers of
12 the papers showing such publication shall be filed with
13 the Board of Commissioners of the County of Ohio on or
14 before the deed reconveying said properties is delivered.
15 Any funds remaining in the hands of the authority at the
16 time of the reconveyance of said properties shall be by
17 the authority paid over to the Board of Commissioners of
18 the County of Ohio to be used by it for purposes in con-
19 nection with said airport. Upon the payment of its in-
20 debtedness, obligations and liabilities, the publishing of
21 the notices aforesaid, the reconveyance of its properties,
22 and the paying over to the Board of Commissioners of the
23 County of Ohio of any funds remaining in its hands, the
24 authority shall cause a certificate showing its dissolution
25 to be executed under its name and seal and to be recorded
26 in the office of the clerk of the county court of Ohio
27 county, and thereupon its dissolution shall be complete.

Sec. 20. Automatic Termination of the Right to Estab-
2 **lish the Authority.**—If on or before the first day of July,
3 one thousand nine hundred sixty-two, the Board of Com-
4 missioners of the County of Ohio shall not have appointed
5 the members of the authority who are to constitute the
6 board for management of its business and affairs, as pro-
7 vided in section three thereof, all right to create and
8 establish said Wheeling-Ohio County Airport Authority
9 under this act shall automatically terminate.

Sec. 21. Liberal Construction of Act.—It is the purpose
2 of this act to provide for the acquisition, construction,
3 improvement, extension, maintenance and operation of
4 a public airport in a prudent and economical manner,
5 and this act shall be liberally construed as giving to the
6 authority full and complete power reasonably required
7 to give effect to the purposes hereof. The provisions of
8 this act are in addition to and not in derogation of any

9 power existing in the Board of Commissioners of the
10 County of Ohio under any constitutional or statutory
11 provisions which it may now have, or may hereafter
12 acquire.

Sec. 22. Provisions Severable.—The several sections
2 and provisions of this act are severable, and if any sec-
3 tion or provision hereof shall be held unconstitutional,
4 all the remaining sections and provisions of this act
5 shall nevertheless remain valid.

RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the 1962 Regular Session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

HOUSE CONCURRENT RESOLUTION NO. 5

(By Mr. Speaker, Mr. Singleton)

[Adopted February 3, 1962.]

Creating the honorary title of "West Virginia Centennial Mountaineer."

WHEREAS, On February first, one thousand nine hundred fifty-five, the fifty-second Legislature created the West Virginia Centennial Commission for the purpose of planning and carrying out the celebration of the one hundredth birthday of the State of West Virginia; and

WHEREAS, The West Virginia Centennial Commission, pursuant to the authority conferred upon it by the Legislature, has been organized and, subsequent to its organization, has proposed the honorary title of "West Virginia Centennial Mountaineer," to be conferred at the Centennial celebration in one thousand nine hundred sixty-three; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Centennial Commission is hereby empowered and authorized to bestow the honorary title of "West Virginia Centennial Mountaineer" upon not more than one hundred state and national figures who have rendered distinguished service to the State of West Virginia; and, be it

Further Resolved, That the West Virginia Centennial Commission shall have full power and authority to select the persons to be so honored.

HOUSE CONCURRENT RESOLUTION NO. 13

(By Mr. Rife and Mr. Seibert)

[Adopted January 26, 1962.]

Concerning the observance of National Flag Week.

WHEREAS, Our Flag, when created, was a symbol of the inextinguishable love of freedom and has remained so ever since; and

WHEREAS, We are now in the midst of an era of competing ideologies, of competing systems of government and economic organizations, during which time we must not lose sight of the ideals which are represented by our Flag; and

WHEREAS, The days from June 8 through June 14 have been set aside and designated as National Flag Week; and

WHEREAS, Most citizens are too busy with the material things in life to take time to pause and reflect upon the ideals for which the American Flag was created and for which it now stands; and

WHEREAS, It is incumbent upon all citizens to again pledge their undying allegiance to the Flag and to accord to it the respect which it deserves and to which it is entitled; and

WHEREAS, Such respect can best be expressed by exhibiting the Flag during National Flag Week and impressing upon all fellow citizens the desirability of similar actions; therefore, be it

Resolved by the Legislature of West Virginia:

That the members of the West Virginia Legislature, do strongly urge the people of this great State to properly observe the week of June 8 through June 14 as National Flag Week by the exhibition of the American Flag during all of that week, and further urge all West Virginians to emphasize the importance of our Flag at all times by rendering to it the respect to which it is entitled and also by becoming familiar with the history and background of its creation; and, be it

Further Resolved, That the Legislature of West Virginia does respectfully request all patriotic, civic, fraternal and veterans organizations in the State of West Virginia, including all units, posts, chapters, lodges, clubs or segments of each in observing Flag Day, 1962, to conduct seminars, schools of instructions, lectures or other appropriate means of disseminating to its own members, and to the general public, where appro-

priate, information concerning proper flag etiquette, the flag code and the proper manner of displaying and otherwise showing proper respect to the Flag of the United States of America to the end that the citizens of our State shall become the best informed of any in the Nation with respect thereto.

HOUSE CONCURRENT RESOLUTION NO. 16

(By Mr. Brotherton)

[Adopted January 29, 1962.]

Requesting the Joint Committee on Government and Finance to continue the study directed by House Concurrent Resolution No. 5, adopted at the First Extraordinary Session of the Legislature, on June 16, 1961.

WHEREAS, The Joint Committee on Government and Finance was directed to make a study of the Department of Purchases; and

WHEREAS, It appears from a memorandum submitted by the subcommittee appointed to this task that it was unable to submit a comprehensive report of such study before the beginning of this session of the Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance be directed to continue this study under the provisions as outlined in said House Concurrent Resolution No. 5, until such time as they are able to make a report, either during this session or at the next special or regular session of the Legislature; and, be it

Further Resolved, That all other provisions of House Concurrent Resolution No. 5 be extended until such time as the work is completed; and, be it

Further Resolved, That the expenses necessary to conduct and complete this study and to make the necessary report, and to draft any proposed bills related thereto, be paid from legislative appropriations made to the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 21

(By Mr. Frazer)

[Adopted February 7, 1962.]

Relating to National Weights and Measures Week.

WHEREAS, The first Weights and Measures Law was enacted by the Congress of the United States 163 years ago on March 2, 1799; and

WHEREAS, The true meaning of weights and measures is ably set forth in the report of the Honorable John Quincy Adams, Secretary of State, in his report to the United States Senate on February 22, 1821, as follows: "Weights and measures may be ranked among the necessities of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; to the distribution and security of every species of property; to every transaction of trade and commerce; to the labors of the husbandman; to the ingenuity of the artificer; to the studies of the philosopher; to the researches of the antiquarian; to the navigation of the mariner, and the marches of the soldier; to all the exchanges of peace, and all the operations of war. The knowledge of them, as in established use, is among the first elements of education, and is often learned by those who learn nothing else, not even to read and write. This knowledge is riveted in the memory by the habitual application of it to the employments of men throughout life"; and

WHEREAS, This establishment of uniform weights and measures assisted the infant country by promoting commercial relationships among the states and between this country and the outside world; and

WHEREAS, The system of uniform weights and measures, thus established, made possible the development of the United States into one of the giant powers of the world; and

WHEREAS, Weights and measures laws in West Virginia have established consumer business confidence so that all may share the benefits of mass production and handling of commodities; and

WHEREAS, The week of March 1-7 has been set aside to recognize the service of weights and measures and the officials who enforce the laws; therefore, be it

Resolved by the Legislature of West Virginia:

That officials of the State and governmental subdivisions, business and commercial agencies, and citizens throughout West Virginia are requested to join in appropriate observance of that week, to the end that the general understanding of weights and measures principles may be enhanced and that cooperation among all interests concerned in or affected by weights and measures administration may be encouraged and promoted; and, be it

Further Resolved, That a copy of this resolution be sent to the President of the United States, the Secretary of Commerce, the Director of National Bureau of Standards, the Governor of West Virginia, the West Virginia members of Congress and the West Virginia Commissioner of Labor.

HOUSE CONCURRENT RESOLUTION NO. 27

(By Mr. Rollins)

[Adopted February 8, 1962.]

Concerning the establishment of an International Mothers' Day Shrine.

WHEREAS, On May 10, 1908, the first official Mothers' Day observance was held in the Andrews Methodist Church in Grafton, West Virginia; and

WHEREAS, On May 8, 1910, Governor William E. Glasscock of West Virginia, issued the first Mothers' Day Proclamation, which read as follows:

"A PROCLAMATION

"The beautiful custom of setting apart one day in each year to pay just tribute to our mothers should not be abandoned or forgotten. Our days of youth may be over, and the closer the ties that bound us to our mothers may have been loosened, but not a link in the chain of affection that bound her heart to ours

has been broken, and we think of Mother today as we always did, the noblest, sweetest and best of all God's creations.

"In appreciation of the love and devotion of our Mothers, and with an earnest desire to perpetuate the observance of the hallowed custom, I, William E. Glasscock, Governor of the State of West Virginia, request that

SUNDAY, MAY 8, 1910

be observed by all churches as

MOTHER'S DAY

and that all persons attend church on that day and wear a white carnation"; and

WHEREAS, In May, 1914, Representative Heflin of Alabama and Senator Sheppard of Texas introduced a joint resolution which was passed by both Houses of our Federal Congress and was approved by President Woodrow Wilson and proclaimed by William Jennings Bryan, Secretary of State, that the second Sunday in May of each year be the official date set aside for the observance of mothers, this date being the anniversary of the death of the founder's mother, Mrs. Ann Reeves Jarvis; and

WHEREAS, The Andrews Methodist Church is located on Main Street in Grafton, West Virginia, and is in reasonably good state of repair; and

WHEREAS, The Grafton Kiwanis Club and other interested people of Grafton have instituted an organization to purchase said property and other properties lying within the city block located between St. John and Luzadder Streets for the purpose of razing all properties within this block except the Mother's Day Church and to landscape and construct a park for the purpose of accentuating the beautiful sentiment surrounding the church and establish an International Mothers' Day Shrine; and

WHEREAS, When completed, not only will West Virginia have a beautiful and lasting memorial to mothers, regardless of race, creed, color or national origin, but will also have a tourist attraction which will draw thousands of people to our State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Commissioner of the Department of Commerce be requested and urged to cooperate to the fullest extent of his authority in promoting this project.

HOUSE CONCURRENT RESOLUTION NO. 28

(By Mr. Liller)

[Adopted February 7, 1962.]

Designating an official state march.

WHEREAS, Bowden D. Ward of Kingwood, West Virginia, has composed a march entitled "W. Va. March—Montani Semper Liberi", which he has dedicated to the State of West Virginia; and has prepared a full band arrangement with conductor's score which will be made available to the public; and

WHEREAS, The following words are printed in the conductor's score and may be sung at will to the trio of the march:

"All hail, West Virginia
Land of strong men and true,
Land of green valleys,
Streams and mountains of blue,
Loyal sons and daughters we will ever be.
Let all the nation know that
Mountaineers are always free."; and

WHEREAS, Mr. Ward holds a master's degree from West Virginia University; has served as music counselor for Mountaineer Boys' State; served as music director in Mannington District, Marion County, from 1927 to 1930; served as music supervisor in Kingwood and Valley districts in Preston County for several years; served as county director of music education in Preston County from 1930 until his retirement January 1, 1960; and has devoted much time toward developing an adequate program of music education in West Virginia; and

WHEREAS, The march composed by Mr. Ward has received wide and favorable approbation by music organizations and in music circles generally; and since it is highly desirable to have an official state march, and especially so at this time when national attention is being focused upon the State because of the centennial celebration; therefore, be it

Resolved by the Legislature of West Virginia:

That the march composed by Mr. Ward and entitled "W. Va. March—Montani Semper Liberi" is hereby designated an official state march of the State of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 31

(By Mr. Auvil)

[Adopted February 7, 1962.]

Requesting the Department of Natural Resources and the Department of Mines to explore and make recommendations on the use of persons employed under the emergency relief programs in strip-mine area reclamation.

WHEREAS, The strip-mine spoilbank problem contributes greatly to stream pollution and directly affects the water table in these areas; and

WHEREAS, There are approximately twenty-five thousand acres of nonbonded strip-mined area in West Virginia in need of reclamation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Department of Natural Resources and the Department of Mines are respectfully requested to explore the possibility of using emergency relief funds in the reclamation of these areas, and to report their findings and recommendations to the next session of the Legislature.

HOUSE CONCURRENT RESOLUTION NO. 32

(By Mr. Edgar)

[Adopted February 8, 1962.]

Declaring the Legislature's approval and support of the objectives of the Pocahontas County Board of Education for a memorial to Pearl Sydenstricker Buck.

WHEREAS, Pearl Buck, author of many books, the earliest and most famous being "The Good Earth", is a native born West Virginian, having been born at Hillsboro, Pocahontas County; and

WHEREAS, She has a distinguished international reputation as a writer, being, along with Sinclair Lewis, William Faulkner, Eugene O'Neill, Ernest Hemingway and others, as winner of the Nobel Prize for literature; and

WHEREAS, She was a winner of the American Pulitzer Prize; and

WHEREAS, In order to demonstrate that she was not writing and selling her books under the established name of Pearl Buck, she has written three selling novels under the pseudonym of John Sedges; and

WHEREAS, Being the one West Virginian to transverse the national and the international in literature; therefore, be it

Resolved by the Legislature of West Virginia:

That the Governor be requested to offer to Pocahontas County, which has already started a Pearl Buck memorial, all moral assistance, and to consider any advancement of funds to make this memorial a place where all lovers of great literature may stop and pay respect to a great West Virginian; and, be it

Further Resolved, That a copy of this resolution be sent to Miss Buck and her publisher, the John Day Company, and to the Pocahontas County Board of Education.

HOUSE CONCURRENT RESOLUTION NO. 35

(By Mr. Frazer and Mr. Myles)

[Adopted February 6, 1961.]

Requesting technical assistance funds from the Area Redevelopment Administration to conduct surveys regarding construction of a North-South Highway in West Virginia, to create a special committee to assist in assembling facts relating to such a highway, and for other purposes.

WHEREAS, A new approach to building a link in the North-South Super-highway System through the State of West Virginia which involves the building of a highway to Interstate Highway System standards from the Weston area to the Beckley area along the route previously considered for the major

North-South Highway has been suggested by U. S. Representative John M. Slack, Jr.; and

WHEREAS, The object of this highway would be to bring about the greater development of the resources and industrial potential of Braxton, Nicholas, Fayette, Raleigh, Webster, Summers, Greenbrier, Clay and adjacent counties; and

WHEREAS, The project should be approached as an important part of the State's current economic development program because first-class highway facilities are a prime need in the development of the aforementioned counties and in the creation of permanent job opportunities for relief of unemployment therein; and

WHEREAS, It has been suggested by Congressman Slack that the project be approached as part of the State's total redevelopment effort and that federal funds might be obtained through participation not only of the Federal Bureau of Public Roads, but also the Area Redevelopment Administration; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature herewith directs the West Virginia Department of Commerce and the State Road Commissioner to prepare and submit, with all deliberate speed, a request for technical assistance funds to undertake a thorough study of the facilities and potential of such highway; and, be it

Further Resolved, That a special committee of ten members of the Legislature, five to be appointed by the President of the Senate and five by the Speaker of the House of Delegates, shall be created to assist in the conduct and application of such a study, including the gathering and dissemination of such information to the appropriate federal, state and local agencies; and, be it

Further Resolved, That the Legislature does hereby request the Commissioner of Commerce, the State Road Commissioner, and members of the West Virginia delegation in the United States Senate and the House of Representatives to assist in the gathering and dissemination of such information and to urge the fullest possible degree of federal participation; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to provide copies of this resolution, upon approval, to the President of the United States, the Secretary of Commerce, the Administrator of the Area Redevelopment Administration, the Federal Highway Administrator, the Secretary of Interior, the Governor of West Virginia, the Commissioner of Commerce for the State of West Virginia, the State Road Commissioner of West Virginia, and the members of the United States Senate and the United States House of Representatives from West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 38

(By Mr. Speaker, Mr. Singleton)

[Adopted February 8, 1962.]

Requesting and directing the Legislative Auditor to provide certain additional legislative services under the direction of the Joint Committee on Government and Finance.

WHEREAS, In pursuance of many studies and other directives of the Legislature, it is increasingly apparent that the responsibility of drafting the conclusions of the various committees into workable bills is too long delayed; and

WHEREAS, Continuous law revision, reference and research services for the benefit of the committees, commissions, and for individual members of the Legislature during and between sessions thereof are highly desirable; and

WHEREAS, Such bill drafting services are presently only available during the sessions of the Legislature, and then only to a limited degree; and

WHEREAS, In order to provide for more adequate legislative services of this nature and to provide for more expeditious and efficient study of the financial problems that confront the Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislative Auditor be requested and directed to provide through the Legislative Auditor's office, and at the direction of the Joint Committee on Government and Finance, additional services as follows:

(1) Part-time or continuous bill drafting, reference and research services, assistance to interim committees, the Legislature and individual members thereof during and between sessions as shall be approved as necessary and advisable to the Joint Committee on Government and Finance.

(2) Such other legislative services as the Joint Committee on Government and Finance deems necessary for rendering assistance in expediting the work of interim committees, the Legislature and the individual members thereof; and

That the expenses of such services be a proper charge against any legislative appropriations for bill drafting, and/or the Joint Committee on Government and Finance.

HOUSE CONCURRENT RESOLUTION NO. 42

(By Mr. Vickers and Mr. Noll)

[Adopted February 7, 1962.]

Requesting the Congress of the United States to approve the construction of the Allegheny Parkway.

WHEREAS, Senate Bill 1798 introduced by Senator Robert C. Byrd and House Bill H. R. 6986 introduced by Representative Harley O. Staggers propose the construction of a parkway along the Allegheny Mountains extending from Hagerstown, Maryland, to Cumberland Gap, Kentucky, and being the first link in a system of parkways extending from Maine to the Gulf of Mexico; and

WHEREAS, This parkway would transverse the State of West Virginia for approximately 360 miles of its total length of 550 miles and would include two spur roads within this State; and

WHEREAS, The route of such parkway, as proposed, would afford access to the principal scenic attractions of the counties of Jefferson, Berkeley, Morgan, Hampshire, Mineral, Grant, Hardy, Randolph, Pocahontas, Greenbrier, Monroe, Summers, Mercer, McDowell, Mingo, Raleigh and Fayette; and

WHEREAS, The Allegheny Parkway would afford convenient access for the majority of the population of the United States to one of the country's most scenic areas that has been hereto-

fore unavailable due to the lack of adequate highways and would provide an enormous economic surge to the State of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby requested to authorize the construction of the Allegheny Parkway as currently proposed in Senate Bill 1798 and House Bill H. R. 6986; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit a copy of this resolution to the United States Senators and members of the House of Representatives from West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 45

(By Mr. Watson)

[Adopted February 8, 1962.]

Requesting the Joint Committee on Government and Finance to make a study of stream pollution and the need for additional legislation to control such pollution and report to the 1963 Session of the Legislature thereon.

WHEREAS, The Water Resources Board and the Division of Water Resources under the State Department of Natural Resources are vested with certain powers and duties relative to the control and elimination of stream pollution; and

WHEREAS, The Water Resources Board and its predecessor, the State Water Commission, has for years studied the problem of stream pollution and taken various steps and actions toward eliminating the same; and

WHEREAS, It is recognized that in dealing with this problem, in fairness to concerns polluting streams, a reasonable time had to be given in order to enable them to install appropriate machinery and take the necessary steps to eliminate pollution, but there is a wide-spread feeling that sufficient time has been given to enable persons and concerns polluting streams to take the necessary steps to eliminate such pollution; and

WHEREAS, It is generally recognized that many of the important streams in West Virginia are still being polluted, including

such waters as the South Branch of the Potomac, Bluestone River, Buffalo Creek in Marion County, Middle Wheeling and Big Wheeling Creek in Ohio County, the Cheat River, the Tygart River, the Middle Fork River and the Buckhannon River; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make a study of the general problem of stream pollution and the need for additional legislation governing this matter; and report its findings and recommendations to the 1963 Session of the Legislature.

HOUSE JOINT RESOLUTION NO. 1

(By Mr. White)

[Adopted February 8, 1962.]

Proposing an amendment to the Constitution of the State, repealing sections six, eight and nine, and amending sections two, seven and ten of article six thereof, relating to the composition of the Senate and House of Delegates and to representation and apportionment of members of the House of Delegates.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That article six of the Constitution be amended by repealing sections six, eight and nine, and amending sections two, seven and ten thereof to read as follows:

Composition of Senate and House of Delegates.

Section 2. The Senate shall be composed of thirty-two members, and the House of Delegates of one hundred members, subject to be increased according to the provisions of section ten of this article.

Provision for Delegate Representation.

Sec. 6. This section is hereby repealed.

Delegate Apportionment after Census.

Sec. 7. After every census the number of members of which the House of Delegates is composed shall be apportioned among the counties in accordance with the following steps:

(1) Ascertain the ratio of representation for the House of Delegates by dividing the whole population of the State by the number of members of which the House is to consist and rejecting the fraction of a unit, if any, resulting from such division.

(2) Divide the population of every county which has a population equal to or in excess of the ratio ascertained in step (1) by said ratio, and assign to each such county a number of Delegates equal to the quotient obtained by this division, excluding the fractional remainder.

(3) Assign to each county having a population less than the ratio ascertained in step (1) one Delegate.

(4) Any additional Delegates necessary to make up the number of which the House is to consist shall then be assigned on the basis of one Delegate each to those counties having the largest fractions unrepresented as determined in step (2), and not receiving a Delegate in step (3).

Designation of Delegate Districts.

Sec. 8. This section is hereby repealed.

Further Apportionments.

Sec. 9. This section is hereby repealed.

Arrangement of Senatorial Districts and Designation and Apportionment of Delegates.

Sec. 10. The arrangement of the Senatorial Districts, and the designation of the number and apportionment of Delegates shall, notwithstanding the provisions of section twenty-two of this article, hereafter be declared by law only in accordance with sections four and seven of this article insofar as applicable

at the first even-year regular session of the Legislature following each succeeding census taken by authority of the United States: *Provided*, That said arrangement, designation and apportionment following the census taken for the year one thousand nine hundred sixty shall be declared by law as aforesaid at the regular session of the Legislature to be held in the year one thousand nine hundred sixty-three.

If the Legislature fails to declare the foregoing arrangement, designation and apportionment three days before the expiration of any such legislative session hereinabove specified, the Governor may, and it shall be his duty to issue a proclamation extending any such session for such further period as may, in his judgment, be necessary for the passage of legislation declaring such arrangement, designation and apportionment; but no other matter shall be considered during such extended session except a provision for the cost of the extended session, and the budget bill, if said session is also extended for consideration of the budget bill in accordance with the provisions of section fifty-one of this article. The action of the Legislature in declaring such arrangement, designation and apportionment shall not be subject to veto by the Governor.

When so declared said arrangement, designation and apportionment shall apply to the first and subsequent general elections for members of the Legislature to be thereafter held until again declared following the succeeding census: *Provided*, That this provision shall not affect the qualification or term of office of any member of the Senate who was elected at the general election next preceding the declaration of said arrangement.

HOUSE JOINT RESOLUTION NO. 3

(By Mr. Speaker, Mr. Singleton, by request)

[Adopted February 5, 1962.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section three of article nine thereof, relating to terms of office of sheriffs.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amend-

ment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That section three, article nine of the Constitution of the State be amended to read as follows:

Article IX. County Organization.

Section 3. Sheriffs; More Than Two Consecutive Terms Prohibited.—Without limitation on the number of nonconsecutive terms, the same person shall not serve as sheriff by election or appointment for more than two consecutive terms, or any part thereof; nor shall any person who acted as a deputy at any time during the preceding four years be elected or appointed sheriff, nor shall any sheriff act as deputy of his successor; nor shall he, during his term of service, or within one year thereafter, be eligible to any other office. The retiring sheriff shall finish all business remaining in his hands, at the expiration of his term; for which purpose his commission and official bond shall remain in force. The duties of the office of sheriff shall be performed by him in person, or under his superintendence.

SENATE CONCURRENT RESOLUTION NO. 15

(By Mr. Carson, Mr. President)

[Adopted February 2, 1962.]

Extending the time within which the Joint Committee on Government and Finance and the Commission on Interstate Cooperation may conduct certain studies and make the reports heretofore referred to and required of said committee and commission by the Legislature.

WHEREAS, Senate Concurrent Resolution No. 17, adopted by the Legislature in regular session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance to make a thorough study of the sums expended annually by the State in all of its departments and agencies for insurance premiums to ascertain whether it would be to the best interests of the State for it to become a self-insurer, and to report its findings, conclusions and recommendations

to the regular session of the Legislature, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 18, adopted by the Legislature in regular session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance to make a thorough study of all special revenue fund accounts and report all such accounts in existence during the current fiscal year; the balance in each of such accounts as of the end of the preceding fiscal year; the receipts and disbursements respecting each of such accounts during the current fiscal year; the balances therein as of the end of the current fiscal year; a detailed statement respecting the sources of such funds and the purposes for which sums were expended therefrom during the current fiscal year, together with its recommendation as to whether such accounts, or any of them, should be altered, eliminated, or transferred to general revenue; and directed the said committee to make its report to the regular session of the Legislature, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 23, adopted by the Legislature in regular session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to conduct such studies as may be necessary to enable them to make a comprehensive report on all matters related to the replacement of our State's business and occupation tax and transportation privilege tax with a corporate net income tax, and to make recommendations on this and related phases of our tax structure; and further directed said committee and commission to make a full and complete report of its studies and findings, together with its recommendations for legislative or other action to the Legislature on or before January one, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 5, adopted by the Legislature in the first extraordinary session, one thousand nine hundred sixty-one, directed the Joint Committee on Government and Finance to make a thorough study and investigation of the merit system in order to determine the soundness and reasonableness of its policies, practices and procedures in view of the particular circumstances prevailing in the State

of West Virginia; and further directed said committee to report its findings and recommendations to the members of the Legislature on or before the date of the convening of the Legislature, regular session, one thousand nine hundred sixty-two; and

WHEREAS, Senate Concurrent Resolution No. 16, adopted by the Legislature in regular session, one thousand nine hundred sixty, directed the Joint Committee on Government and Finance to conduct or cause to be conducted an exhaustive study of the entire area of mental illness; and further directed said committee to make a full report of its study, investigation and recommendations for legislative or other action to the Legislature on or before January first, one thousand nine hundred sixty-one; and

WHEREAS, House Concurrent Resolution No. 34, adopted by the Legislature in regular session, one thousand nine hundred fifty-nine, directed the State Election Commission to make a thorough study, under the direction and supervision of the Joint Committee on Government and Finance, of all laws of West Virginia pertaining to elections and to prepare a recodification thereof; and further directed the said commission in consultation with county and circuit clerks, ballot commissioners, state and county party leaders and other interested citizens to prepare recommendations for changes in the election laws which will permit the conduct of the electoral process with the greatest efficiency; and further directed said commission to present to the Legislature in regular session in the year one thousand nine hundred sixty-one drafts of all of its findings, including the proposed recodification of the election laws and the proposed changes therein; and

WHEREAS, Senate Concurrent Resolution No. 11, adopted by the Legislature in regular session, one thousand nine hundred fifty-seven, directed the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to make a thorough study of our institutions of higher education for the purpose of gathering information which will reflect the following:

(a) The present needs and cost as compared to the national average and trend;

(b) Whether or not these needs are being met now; and if not,

(c) The way in which the probable future needs may be met and the cost of same;

(d) The possibility of reducing these determined costs by combining the responsibility, authority and activities of the state agencies now exercising control over the institutions; and further directed said committee and commission to summarize the results of this study in a manual which will, in particular, reflect the needs and costs relative to a five-year program and a ten-year program and in addition will reflect the needs and costs for each year of the five-year program, beginning with the fiscal year one thousand nine hundred fifty-eight—fifty-nine, and that these established needs and costs be itemized under such general budgetary terms as personal services, current expenses, repairs and alterations, equipment and capital expenditures, and that these costs be correlated with program and performance objectives, said study to be completed by November first, one thousand nine hundred fifty-seven; and further directed that the report of the findings and recommendations be submitted to the Legislature, the public in general, and the Governor, with the request that such report and recommendations become an order of business on the agenda of the Legislature at its next regular session, one thousand nine hundred fifty-eight; and

WHEREAS, It appears from the 1961 annual report of the Joint Committee on Government and Finance and Commission on Interstate Cooperation that the hereinbefore described studies have not been completed; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the aforesaid studies be continued by the Joint Committee on Government and Finance or jointly by the Joint Committee on Government and Finance and the Commission on Interstate Cooperation, as the case may be; and, be it

Resolved Further, That all provisions of said concurrent resolutions be continued in full force and effect until such time as the studies and work described therein have been completed; and, be it

Resolved Further, That all reports, findings, drafts, and recommendations required of said committee or jointly of said committee and commission be made to the Legislature on or before the first day of the regular session, one thousand nine hundred sixty-three.

SENATE CONCURRENT RESOLUTION NO. 21

(By Mr. McCourt)

[Adopted February 3, 1962.]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the capital improvements which will be needed at our state-supported institutions of higher education in the immediately succeeding years, and make proposed recommendations concerning the financing of those improvements.

WHEREAS, By chapter sixty-five, Acts of the Legislature, regular session, one thousand nine hundred fifty-nine, the Legislature established two special nonrevolving capital improvements funds, one for the schools under the Board of Governors and the other for the schools under the State Board of Education, to be pledged by the respective boards to meet the cost of construction (but not for the servicing of bonds for construction) of capital improvements for schools under their authority; and

WHEREAS, The Legislature by this same act imposed an additional registration fee of fifty dollars per semester upon all full-time students of state institutions of higher education and directed that one third of the proceeds derived from this additional fee go into the State's general revenue and the remaining two thirds of the proceeds be deposited into the aforesaid capital improvement funds; and

WHEREAS, The one thousand nine hundred fifty-nine budget act included an appropriation of one million two hundred thousand dollars from these special capital improvement funds; the one thousand nine hundred sixty budget act included appropriations of one million eight hundred eighty thousand dollars from these funds; the one thousand nine hundred sixty-one budget act included appropriations of one million five hundred seventy-one thousand two hundred fifty dollars from

these funds; and budget requests for appropriations from these funds for the one thousand nine hundred sixty-two—sixty-three fiscal year amount to one million seven hundred seventy thousand seven hundred four dollars; and

WHEREAS, Chapter seven, Acts of the Legislature, regular session, one thousand nine hundred fifty-six, authorized the Board of Governors of West Virginia University to issue revenue bonds of the State, not to exceed ten million dollars in principal amount thereof, to finance the cost of providing new buildings for the college of agriculture, the agricultural experiment station, the agricultural extension division, the college of engineering, the engineering experiment station, and the school of mines of West Virginia; directed that the principal of and interest on such bonds shall be payable solely from a special nonrevolving fund created in the state treasury; and further directed that there shall be paid into such fund all enrollment, tuition and other fees, not paid into other special funds, collected from students at the university other than students in the school of medicine, medical technology, dentistry, dental technology, nursing and pharmacy; and

WHEREAS, Chapter eight, Acts of the Legislature, regular session, one thousand nine hundred fifty-six, as amended, authorized the West Virginia Board of Education to issue revenue bonds of the State, not to exceed one million nine hundred thousand dollars in principal amount thereof, to finance the cost of providing a health and education building for Marshall University; directed that the principal of and interest on such bonds shall be payable solely from a special nonrevolving fund created in the state treasury; and further directed that there shall be paid into such fund all enrollment, tuition and other fees, not paid into other special funds, collected from students at Marshall University; and

WHEREAS, Section one, article one-a, chapter twenty-five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, permits the governing board of any state educational institution to impose and collect a student union building fee for the construction and operation of a student union building or combination union student dining hall building, or for the renovation of an existing structure for such use, or for the payment of interest and principal on any bonds

issued to finance part or all of the cost of construction or renovation of any such building; and

WHEREAS, Section five, article one-a, chapter twenty-five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, permits the Board of Governors of West Virginia University to expend from excess moneys derived from the operation of the book store, a sum not exceeding two hundred eighty thousand dollars for the construction of a building to house the university book store; and

WHEREAS, Section four, article one-a, chapter twenty-five of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, permits the governing board of each state educational institution to fix the fees to be charged students and faculty members for room, board and meals at the dormitories, faculty halls, dining halls, and cafeterias operated by the board at the institution; and permits the board to expend receipts, not needed for the operation and maintenance cost of such operations and not needed for sinking fund requirements due on any outstanding revenue bonds for which such receipts may have been pledged, to defray the cost in part or in whole of the construction of any such facility; and

WHEREAS, As of July second, one thousand nine hundred sixty-one, the revenue bonded indebtedness for capital improvements at institutions of higher education in the State amounted to twenty-three million one hundred fifty-eight thousand dollars; and

WHEREAS, Requests for appropriations from surplus revenue for capital improvements at institutions of higher education for the fiscal year one thousand nine hundred sixty-two—sixty-three amount to over forty-three million dollars; and

WHEREAS, A one thousand nine hundred sixty-one report by the subcommittee on higher education study of the Joint Committee on Government and Finance and the Commission on Interstate Cooperation states that practically all available revenue has been or is in the process of being pledged for bonds; that it would appear that funds available from this source will be very limited for the next several years; and that the subcommittee is quite concerned with the capital

improvement needs cited at the various universities and colleges; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance, as a part of its continuing study of our institutions of higher education under Senate Concurrent Resolution No. 11, adopted by the Legislature, regular session, one thousand nine hundred fifty-seven, be hereby directed to specifically make a comprehensive study of the capital improvement needs of our state-supported institutions of higher education in the immediately succeeding years and to make proposals as to how needed improvements should be financed.

SENATE CONCURRENT RESOLUTION NO. 25

(By Mr. Carrigan)

[Adopted February 7, 1962.]

Directing the Joint Committee on Government and Finance to make a comprehensive study of the investment of the workmen's compensation fund, state teachers' retirement fund, public employees' retirement system fund, death, disability and retirement of the department of public safety, judges' retirement fund, the state sinking fund, and all other public funds of this state which may be lawfully invested, and to make such proposals and recommendations to the Legislature as may be proper to improve the return on said funds and also to safeguard the investment of said funds.

WHEREAS, There is now held by the State of West Virginia through and by various boards and agencies a number of trust funds and other funds such as workmen's compensation, teachers' retirement, public employees' retirement, judges' retirement, state police retirement, the state sinking fund, and numerous other special and general funds in the amount of at least two hundred thirty-eight million dollars; and

WHEREAS, Various proposals to liberalize and change the investment policy of this State with regard to said funds have been made with a view to obtaining a higher return or yield thereon; and

WHEREAS, The State of West Virginia and its various departments and agencies, including state universities and colleges, are in need of funds for capital improvements; and

WHEREAS, The changing of the investment policy of this State as to the above-mentioned funds in the amount of two hundred thirty-eight million dollars is a matter of serious concern; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance of the West Virginia Legislature make a study of the investment policies of this State so far as they concern the heretofore enumerated funds and any other funds which may be available for long-term investments and make such recommendation to the Legislature, regular session, one thousand nine hundred sixty-three, as may seem wise and proper concerning the investment of said funds, and any changes that might be necessary with respect thereto, and such legislation as may be necessary to accomplish the same.

COMMITTEE SUBSTITUTE FOR
SENATE JOINT RESOLUTION NO. 3

(Originating in the Senate Committee on the Judiciary)

[Adopted February 8, 1962.]

Proposing an amendment to the Constitution of the State amending sections thirteen, twenty-two and thirty-three, article six thereof, relating to eligibility to a seat in the Legislature, to the length of legislative sessions and the business which may be considered in thirty-day sessions, and to the compensation and expenses of members of the Legislature.

Resolved by the Legislature of West Virginia, two thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters at the next general election to be held in the year one thousand nine hundred sixty-two, which proposed amendment is as follows:

That sections thirteen, twenty-two and thirty-three, article six of the Constitution of West Virginia, be amended to read as follows:

Section 13. Eligibility to Seat in Legislature.—No person holding a lucrative office or employment under the State, the United States, or any foreign government; no member of Congress; and no person who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.

Sec. 22. Length of Legislative Session.—The regular session of the Legislature held in the year one thousand nine hundred sixty-three and every second year thereafter shall not exceed sixty days, and the regular session held in the year one thousand nine hundred sixty-four and every second year thereafter shall not exceed thirty days. During any thirty-day session the Legislature shall consider no other business than the annual budget bill, revenue measures and such business as may be stated by the Legislature on its own motion in a concurrent resolution adopted by a two-thirds vote of the members elected to each house. All sessions may be extended by the concurrence of two thirds of the members elected to each house.

Sec. 33. Compensation and Expenses of Members.—Each member of the Legislature shall receive for his services the sum of fifteen hundred dollars a year, and may receive such additional sum, as may be provided by statute, for expenses for actual attendance while the Legislature is in session, and for mileage for one round trip in connection with any session and for one round trip in connection with attending a party caucus held in advance of the date of the assembly of the Legislature in odd-numbered years for the purpose of selecting candidates for offices of the two houses, the additional sum of ten cents for each mile traveled in going to and returning from the seat of government by the most direct route. The Speaker of the House of Delegates and the President of the Senate shall each receive an additional compensation of five dollars a day for each day served as presiding officer. Any member of the Legislature may receive, from appropriations for such purposes, compensation for services rendered in the performance of interim committee or commission assignments. Notwithstanding any other provision of the Constitution, the compensation and expenses herein provided for shall be paid to each member of the Legislature on and after the adoption of this amendment.

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The first column gives the number of the bill and the second column the chapter assigned to it. House Bills appear first, followed by Senate Bills.

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